

**STATE OF ILLINOIS**  
**ILLINOIS COMMERCE COMMISSION**

People of the State of Illinois	:	
	:	13-0501
Complaint to Suspend Tariff	:	13-0517
Changes submitted by Ameren	:	(Cons.)
Illinois and to Investigate Ameren	:	
Illinois Rate MAPP pursuant to	:	
Sections 9-201, 9-250 and 16-108.5	:	
of the Public Utilities Act.	:	
	:	
Ameren Illinois Company	:	
d/b/a Ameren Illinois	:	
	:	
Revisions to its formula rate	:	
structure and protocols. (tariffs	:	
filed on August 19, 2013).	:	

**PROPOSED INTERIM ORDER**

DATED: November 1, 2013



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	:	
<b>Ameren Illinois Company d/b/a Ameren Illinois</b>	:	<b>13-0517</b>
	:	
<b>Revisions to its formula rate structure and protocols. (tariffs filed on August 19, 2013).</b>	:	<b>(Cons.)</b>
	:	

**PROPOSED INTERIM ORDER**

By the Commission:

**I. INTRODUCTION**

On April 19, 2013, Ameren Illinois Company d/b/a Ameren Illinois ("AIC") filed with the Illinois Commerce Commission ("Commission") its annual formula rate update and reconciliation proceeding, pursuant to Section 16-108.5(d) of the Public Utilities Act ("Act"), 220 ILCS 5/1-101 et seq., initiating Docket No. 13-0301. On May 22, 2013, the Illinois General Assembly enacted Public Act 98-0015 ("PA 98-0015"), which amended Section 16-108.5 of the Act. AIC filed on May 30, 2013 revisions to its formula rate and revenue requirement under the revised formula rate structure in compliance with PA 98-0015. On June 5, 2013, on the basis of brief staff report dated May 30, 2013, the Commission approved AIC's formula rate revisions and revenue requirements in Docket No. 13-0385. Thereafter, AIC filed supplemental direct testimony in Docket No. 13-0301, which reflected the changes to the formula rate tariffs approved in Docket No. 13-0385.

Commission Staff ("Staff") and the Attorney General of Illinois ("AG") filed testimony in Docket No. 13-0301 recommending adjustments that required alterations to AIC's formula rate structure or protocols. In response, AIC argued that such changes to the formula rate structure and protocols could not be made in an update proceeding pursuant to Section 16-108.5, but must be made in a separate proceeding pursuant to Section 9-201 of the Act. On August 19, 2013, AIC filed tariffs pursuant to Section 9-201, in which it proposed certain revisions to its formula rate. On August 30, 2013, the AG filed a complaint initiating Docket No. 13-0501. In the complaint, the AG asked the

Commission to suspend AIC's August 19, 2013 tariffs and requested two changes to AIC's formula rate structure and protocols. The Commission suspended AIC's August 19, 2013 tariffs on September 10, 2013, which initiated Docket No. 13-0517. On September 11, 2013, the AG moved to consolidate Docket Nos. 13-0301, 13-0501, and 13-0517. The AG, Staff, and AIC subsequently agreed in a joint motion to consolidate Docket Nos. 13-0501 and 13-0517, leaving Docket No. 13-0301 as an independent proceeding. The Administrative Law Judges ("ALJs") granted the latter motion.

In the joint motion, the parties requested an expedited schedule in the consolidated proceeding that would allow for the formula rate structure and protocols addressed in that proceeding to be implemented for rates effective in 2014. An expedited schedule is necessary in light of Section 16-108.5(c), which provides in part that any change approved under these circumstances be adopted no less than 30 days before new rates go into effect. This means that any change must be approved by December 2, 2013. In order to accommodate the expedited schedule, the parties requested that the Commission limit the scope of the contested issues to the formula rate adjustments that were: (i) raised in the AG complaint in Docket No. 13-0501; (ii) proposed by AIC in its filing in Docket No. 13-0517; or (iii) proposed on the record in Docket No. 13-0301.

Pursuant to due notice, a status hearing was held in this matter before duly authorized Administrative Law Judges of the Commission at its offices in Springfield, Illinois on September 23, 2013. Thereafter, an evidentiary hearing was held on October 10, 2013. In addition to AIC, Staff, and the AG, Citizens Utility Board ("CUB") petitioned to intervene and participated in this matter. Appearances were entered by counsel on behalf of AIC, Staff, the AG, and CUB. At the evidentiary hearing, AIC offered the testimony of David Heintz, a Vice President of the management consulting and economic advisory firm Concentric Energy Advisors, Inc., Robert Mill, AIC's Senior Director of Regulatory Policy and Rates, and Ronald Stafford, AIC's Director of Regulatory Accounting. The Staff witnesses include Theresa Ebrey and Mike Ostrander, Accountants in the Accounting Department of the Financial Analysis Division of the Commission's Bureau of Public Utilities. Michael Brosch, a principal with Utilitech, Inc., a consulting firm engaged primarily in utility rate and regulation work, and David Effron, a consultant specializing in utility regulation, testified on behalf of the AG.

In her testimony in the instant consolidated proceeding, Staff witness Ebrey made four recommendations. One of these recommendations concerned Commission approval of changes proposed by AIC in its filing in Docket No. 13-0517, and thus is properly within the scope of the current schedule. Ms. Ebrey's three remaining recommendations requested that the Commission issue an order defining certain terms and finding that certain changes to the formula rate structure and protocols must be made pursuant to Section 9-201. These recommendations do not fall within the limited scope of the current schedule. In order to develop a full and complete record concerning these recommendations, the parties requested at the October 10, 2013 evidentiary hearing that this proceeding be split into two phases. Those issues raised within the scope of the original schedule would be addressed in an interim order to be

entered at the Commission's November 26, 2013 Regular Open Meeting while the three aforementioned issues raised by Ms. Ebrey would be addressed in a final order entered in early 2014. Any changes approved in the final order would not be reflected in AIC's formula rate structure and protocols until 2015. Having few viable options, the ALJs agreed to this request.

AIC, Staff, CUB, and the AG each filed an Initial Brief and Reply Brief. A Proposed Interim Order was served on the parties.

## **II. UNCONTESTED ISSUES**

### **A. Uncollectible Expense**

Section 16-108.5(c) provides that: "In the event the utility recovers a portion of its costs through automatic adjustment clause tariffs on the effective date of this amendatory Act of the 97th General Assembly, the utility may elect to continue to recover these costs through such tariffs, but then these costs shall not be recovered through the performance-based formula rate." AIC currently has an automatic adjustment clause tariff allowing it to track its uncollectible expense and pass that cost on to consumers. The Commission must assure that AIC makes appropriate changes to Schedules FR A-1 and FR A-1 REC to remove the effect of the uncollectible expense from the formula rate revenue requirement.

#### **1. Reconciliation Year - FR A-1 REC**

In Docket No. 13-0301, Staff witness Ebrey proposed a change to an input in AIC's formula rate template that would reflect uncollectible expense included in base rates during the reconciliation year ("RY"). Ms. Ebrey argued that the change was necessary in order to ensure no over-recovery or under-recovery of uncollectibles expense. AIC agreed that the proposed change might be a more accurate way to reflect uncollectible expense than the method currently used in the formula rate template. AIC included the proposed change in its filing initiating Docket No. 13-0517, which is a Section 9-201 proceeding. The proposed change to line 2a of AIC's Sch. FR A-1 REC will ensure the amount to be used in the reconciliation revenue requirement for uncollectibles expense will equal the amount of uncollectibles expense included in the revenue requirement that provided the basis for rates that were charged during the period. The Commission finds the proposed change reasonable and adopts it.

#### **2. Gross-up of Reconciliation with Interest and/or Collar Revenue Requirement Adjustments**

Staff witness Ebrey used traditional revenue requirement schedules to calculate her proposals in Docket No. 13-0301. As a result, her schedules did not gross-up Uncollectible Expenses to account for her proposed adjustments to Reconciliation with Interest and the Collar Revenue Requirement. AIC noted that a change in practice to accommodate Ms. Ebrey's proposal to not gross-up Uncollectible Expense would

require modification of several line items on AIC's Sch. FR A-1, and Sch. FR A-1 REC, as well as source changes to Sch. FR A-3, Sch. FR A-4, and Sch. FR C-4. The parties agree that Ms. Ebrey's proposal to not gross-up Uncollectible Expense supports the above revision and is just and reasonable. The Commission concurs with the parties' assessment and adopts the proposed change.

#### **B. Year-End Balances for Materials & Supplies and Customer Deposits**

In Docket No. 13-0301, Staff witness Ostrander proposed that year-end values of Materials & Supplies and Customer Deposits be used to calculate the filing year ("FY") rate base, instead of the 13-month average values required by the formula template currently in effect. Implementation of this change will require modification of a number of lines on AIC's Sch. FR B-1 and changes to Appendix 1 and Appendix 2. In addition, PA 98-0015 requires that the revenue requirement be determined using year-end rate base. Because Materials & Supplies and Customer Deposits are components of rate base, AIC and Staff agree that it is appropriate to incorporate year-end values for these items into the revenue requirement, pursuant to PA 98-0015. The Commission finds this proposed change reasonable and adopts it.

### **III. CONTESTED ISSUES**

#### **A. Return on Equity Collar Calculation**

The AG proposes an adjustment pertaining to AIC's return on equity ("ROE") collar computation. ROE is the amount that shareholders earn in a given year from the money they have invested. ROE is calculated by dividing net income (i.e., the return) by the balance of common equity. Thus, all else being equal, more equity means a lower return while less equity means a higher return. The term "ROE collar" refers to a mechanism required by Section 16-108.5(c)(5) that limits how much or how little AIC may earn pursuant to the formula rate provisions of Section 16-108.5 of the Act. This section requires a comparison of two ROEs from a given year: (1) AIC's actual, "earned" ROE, and (2) a standard or formulaic ROE determined under EIMA.<sup>1</sup> The "collar" ties upper and lower limits on AIC's earnings to EIMA's standard ROE. If AIC's actual ROE is "more than 50 basis points higher" than the standard ROE, AIC must apply a credit to restore the difference. Conversely, if the earned ROE is "more than 50 basis points less" than the standard, AIC must apply a proportionate surcharge. If AIC's ROE falls within the 100-basis-point "collar," AIC applies neither a credit nor a charge.

In Docket No. 13-0385, AIC proposed and the Commission approved an ROE collar computation that is in substance identical to the computation in Schedule FR A-3, and which was based on year-end rate base. The AG's proposal would require a change to AIC's Schedule FR A-3 to use average rate base instead of year-end rate base to calculate the common equity balance for the purpose of determining the earned ROE for the collar calculation.

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<sup>1</sup> See Section 16-108.5(c)(3) ("cost of equity" is the sum of monthly average yields of certain federal bonds and 580 basis points).



## **1. AIC's Position**

AIC urges the Commission to reject the AG's revision pertaining to the ROE collar calculation. AIC complains that the practical result of the AG's proposal to use AIC's average rate-base balance is to unlawfully tighten the ROE collar. EIMA imposes substantial investment requirements on participating utilities, so AIC's rate base will generally increase throughout the year. This means that average rate base will likely be smaller than year-end rate base. A smaller rate base means a lower balance of common equity. As explained above, a lower balance of common equity will result in a higher return on equity. AIC is concerned that the net outcome of the AG's proposal is that it will effectively increase AIC's earned ROE, making it more likely to exceed the standard ROE and hence require a refund.

In support of its position, AIC maintains that the AG's proposal can not be adopted without violating the requirements of EIMA. AIC asserts that the provision establishing the ROE collar specifically requires that the "earned" ROE be "calculated using" AIC's "actual year-end capital structure." (See Section 16-108.5(c)(5) and (c)(2)) Likewise, AIC continues, subsection (c)(5) specifically requires that earned ROE be calculated "consistent with" the overarching requirements of Section 16-108.5, which mandate the use of "final historical data" in general and "year-end rate base" specifically in formula-rate computations. (See Section 16-108.5(d)(1)) For these reasons, AIC believes that the AG's proposal contradicts the express provisions of EIMA and must be rejected.

AIC explains further that capital structure comprises three basic funding balances: long-term debt, preferred stock, and common equity. The pertinent component of "year-end capital structure" for calculating ROE is the balance of common equity. AIC asserts that its year-end common-equity balance can not be determined using average rate base. The only way to determine the year-end equity balance is to multiply (i) year-end rate base by (ii) the year-end ratio of common equity. A modification to either the rate-base figure or the ratio produces something other than "actual year-end capital structure." AIC contends that such a modification is precisely what the AG proposes despite the fact that subsection (c)(2)'s requirement of year-end capital structure demands use of year-end (not average) rate base.

The AG seeks to equate "capital structure" with "capital structure ratios." But according to AIC the statute does not use the latter term, and they are not the same thing. AIC states that a ratio is a way of describing the relative weight of a company's financing; it is not the financing balance itself. AIC argues that interpreting "capital structure" to mean "financing ratios" would be out of step with the express intent of the statute. Subsection (c)(5) specifically instructs the Commission how to "calculate[]" ROE, and it requires use of "actual year-end capital structure." But, practically, if you only know the ratio, you can not calculate ROE. A ratio simply describes a quantitative relationship between amounts; it does not describe the actual amounts. AIC does not earn a return on ratios; it earns a return on an actual amount of money and specifically

the balance of common equity. AIC maintains that subsections (c)(2) and (c)(5) would be incomplete instructions, providing no real guidance at all, if they meant only that the Commission were to use a certain ratio, multiplied by any other factor at all, to determine the utility's financing. In this context, when EIMA is expressly telling the Commission how to calculate ROE, AIC does not believe that it is not plausible that "actual year-end capital structure" simply means "financing ratio."

AIC argues that the AG ignores the requirement to use "final historical data" and does not even attempt to account for this requirement in its proposal to use average rate-base data to determine ROE. AIC alleges that the AG's proposal assumes that all EIMA requires is any use, however creative, of any "data" appearing in the FERC filing to suit its purposes—but this is simply to read the word "final" out of the statute. Although the AG might be willing to disregard the statute, AIC reminds the Commission that it is obliged to discern and then follow the legislative mandate.

AIC also observes that EIMA discusses the determination of rate base for formula-rate purposes four times, and four times it specifies "year-end rate base." (See Section 16-108.5(d)(1) [requiring "year-end rate base" in determining actual revenue requirements in reconciliation years; requiring "year-end rate base" in certain calculation in first reconciliation case; clarifying intent regarding reconciliation and specifying use of "year-end rate base"]; Section 16-108.5(k)(3) [confirming scope of required tariff changes, including those "regarding the reconciliation components related to year-end rate base"] AIC notes that the only provision in which the term "rate base" appears without the term "year-end" is a provision that does not prescribe the calculation of rate base. (See Section 16-108.5(c)(4)(F) [requiring that certain "unamortized balance[s] shall be reflected in rate base"]) AIC interprets this to mean that there is no provision of EIMA that even arguably grants the Commission discretion to substitute any other concept of rate base for year-end rate base; much less is there a provision that commands that result.

AIC argues further that the "consistent with" provision also defeats AG witness Effron's suggestion that the General Assembly left alone the Commission's "use of average rate base in the ROE collar calculation." AIC accuses the AG of ignoring the fact that the General Assembly has always required the use of "final historical data" in formula ratemaking, has since added the term "year-end" to every rate-base prescription, and has created no exception for ROE collar calculations. The AG seems to believe that the ROE-collar provision is an island unto itself from the rest of EIMA. It seems to believe that even if year-end data and year-end rate base must be used everywhere else in the formula rate, it need not be used in subsection (c)(5). But in AIC's view that interpretation is refuted by the "consistent with" provision of subsection (c)(5). Far from licensing a one-off change to EIMA's overarching year-end-data requirements, AIC asserts that subsection (c)(5) expressly provides that these requirements control here, too.

## 2. AG's Position

The AG requests that the Commission correct Ameren Ex. 2.4 to eliminate an unauthorized change to the ROE collar computation found on Schedule FR A-3 that occurred as a consequence of that schedule erroneously referring to an input on Schedule FR A-1 REC in calculating the collar. The Commission approved an ROE collar computation in Docket Nos. 12-0001 and 12-0293 that reflected, in the AG's opinion, an accurate calculation of the ROE realized by AIC in the RY. PA 98-0015 did not specifically address the computation of the ROE collar; therefore, the AG believes that no change should have been made to that aspect of the Schedule FR A-3 ROE collar computation in AIC's post PA 98-0015 filing, effective June 5, 2013. The AG requests that the Commission modify AIC's Schedule FR A-3 to return the ROE collar computation to its original terms.

In Docket Nos. 12-0001 and 12-0293 concerning AIC and in Dockets 11-0721 and 12-0321 concerning Commonwealth Edison Company ("ComEd"), the Commission determined that in order to reflect the actual costs incurred by the utility in the RY, the formula rate template should use the average rate base for calculating the RY revenue requirement. The Commission also used the average rate base in calculating the ROE collar, which is shown on Schedule FR A-3. AG witness Effron testified in this docket, "[t]he net income used in the ROE calculation is the income earned over the course of the year, not the annualized net income being earned at the end of the year. To be consistent, the common equity balance used in the denominator of the ROE calculation should be the average balance of common equity over the course of the year." (AG Ex. 2.0 at 3-4)

The AG acknowledges that the General Assembly made several changes in PA 98-0015 governing how the formula rate is administered. Specifically, it amended Section 16-108.5(d)(1) which addresses the inputs to the formula rate revenue requirement and how the filing year and the "prior" year revenue requirements are to be reconciled. In describing the reconciliation revenue requirement, Section 16-108.5(d)(1) provides as follows, with the PA 98-0015 changes underlined:

The filing shall also include a reconciliation of the revenue requirement that was in effect for the prior rate year (as set by the cost inputs for the prior rate year) with the actual revenue requirement for the prior rate year (determined using a year-end rate base) that uses amounts reflected in the applicable FERC Form 1 that reports the actual costs for the prior rate year. Any over-collection or under-collection indicated by such reconciliation shall be reflected as a credit against, or recovered as an additional charge... (Section 16-108.5(d)(1))

This subsection addresses how the reconciliation revenue requirement is to be calculated. The last paragraph of subsection 16-108.5(d)(1) states:

Notwithstanding anything that may be to the contrary, the intent of the reconciliation is to ultimately reconcile the revenue requirement reflected in rates for each calendar year, beginning with the calendar year in which the utility files its performance-based formula rate tariff pursuant to subsection (c) of this Section, with what the revenue requirement determined using a year-end rate base for the applicable calendar year would have been had the actual cost information for the applicable calendar year been available at the filing date.

The underlined language was added by PA 98-0015. This section does not expressly address the ROE collar computation.

The AG points out that the ROE collar computation is described in a different subsection: 16-108.5(c)(5). Unlike subsection 16-108.5(d) which addresses the calculation and treatment of the utility's expenses and revenue requirement, the AG states that subsection 16-108.5(c)(5) addresses the company's actual profitability. The ROE collar allows the utility to retain earnings up to 50 basis points over the authorized return, and requires it to accept earnings up to 50 basis points below the authorized return. If the utility's earnings fall outside these bands, it can impose an additional charge (if earnings are more than 50 basis points below the authorized return) or it must credit the difference to consumers (if earnings are more than 50 basis points above the authorized return). The AG relates that the key factors in determining the utility's prior year ROE are its rate base, its net income, and its capital structure. Mr. Effron testifies that the net income component of the ROE calculation is the income earned over the course of the year. Section 16-108.5(c) (5) directs the Commission to calculate the earned rate of return:

using costs and capital structure approved by the Commission as provided in subparagraph (2) of this subsection (c), consistent with this Section, in accordance with Commission rules and orders, including, but not limited to, adjustments for goodwill, and after any Commission-ordered disallowances and taxes.

Section 16-108.5(c)(2) states that the formula rate shall:

Reflect the utility's actual year-end capital structure for the applicable calendar year, excluding goodwill, subject to a determination of prudence and reasonableness consistent with Commission practice and law.

While Section 16-108.5 requires that "year-end rate base" be used in determining the reconciliation revenue requirement and the utility's capital structure, the AG states that it does not specify or require that year-end rate base be used in the ROE collar calculation established in Section 16-108.5(c)(5).

The AG states further that a fundamental rule of statutory construction is that "the expression of one thing in a provision generally excludes all others, even where there

are no negative words of prohibition.” Town of Normal v. Hafner, 395 Ill.App.3d 589, 918 N.E.2d 1268 (4th Dist. 2009). The General Assembly had before it the Commission’s orders requiring, among other things, that AIC and ComEd calculate the ROE collar on the basis of average rate base. The AG observes, however, that neither the prior House nor Senate Resolutions referenced in PA 98-0015 nor PA 98-0015 itself mentions how the rate base is to be treated in calculating the ROE collar. The AG states that the General Assembly expressly directed the use of year-end rate base for revenue requirement issues but did not so much as mention the use of year-end rate base in connection with the ROE collar. The AG asserts that principles of statutory construction show that the failure to address an issue, when other issues are addressed, shows an intent to leave the issue unchanged.

Despite the absence of any change to the law regarding the use of average rate base in the ROE collar calculation, the AG criticizes AIC for changing its tariff on June 5, 2013 to replace the use of the average rate base in the ROE collar calculation with the use of year-end rate base. Because Line 1 of Schedule FR A-3, which lays out the ROE collar calculation, takes the rate base value from Line 11 of Schedule FR A-1 REC, which calculates the reconciliation revenue requirement, the AG contends that the ROE calculation was automatically and incorrectly modified. The AG maintains that this change was neither authorized nor required by PA 98-0015. The AG states further that using average rate base in the ROE collar computation matches the net income used in the ROE calculation, which is the income earned over the course of the year, with the rate base as it existed during the course of the year. Consistent with Section 16-108.5(c)(2) and (5), the AG states that the year-end capital structure, showing the percentages of rate base funded by debt and by equity, is used to establish the dollar value of common equity.

In its Order in Docket No. 12-0001, the Commission noted that EIMA did not specify exactly how the "actual costs of delivery services" are to be determined. While PA 98-0015 specified the use of year-end rate base for some aspects of the formula rate, the AG observes that it did not address the ROE collar other than by reference to year-end capital structure. Because PA 98-0015 did not require that the ROE collar calculation use year-end rate base, the AG argues that the ROE collar calculation should be done so that it most accurately accounts for AIC’s actual costs, and matches revenues and rate base. Mr. Effron testifies that in order to reflect AIC’s actual costs for the collar period, the year-end common equity ratio should be applied to the average rate base because that will produce a dollar balance that correctly represents the actual capital supplied by equity investors to support AIC’s rate base over the course of the year for which the ROE is being calculated. He explains further:

To be consistent, the common equity balance used in the denominator of the ROE calculation should be the average balance of common equity over the course of the year. In times when the common equity balances is growing, using the end of period balance of common equity will understate the actual ROE earned on common equity provided by investors over the course of the year, and in times when the common equity balance is

decreasing, using the end of period balance of common equity will overstate the actual ROE earned on common equity provided by investors over the course of the year. (AG Ex. 2.0 at 4)

The AG maintains that it is vital that the ROE accurately reflect the investment provided by investors over the course of the year in order to accurately assess the return ratepayers are actually providing to investors.

Mr. Effron illustrates the problem with using year-end rather than the average rate base to determine the ROE by assuming a savings account where \$100 per month is deposited over the course of a year, where the interest rate on the account is 5%. Mr. Effron assumes an investor opened a savings account at the beginning of the year, added \$100 per month to that account over the course of the year. At the end of the year, the investor will have contributed \$1,200 to the account. The investor, however, will have no claim to interest of \$60, or 5% times \$1,200, according to Mr. Effron. Rather, he asserts that the interest earned would be \$30, or 5% times \$600, the average balance of the amount contributed for the year. Notwithstanding the stated interest rate of 5%, if one calculated the interest rate by dividing \$30 (the interest actually received) by the cumulative year-end balance of \$1,200 amount, the result would be 2.5%. Mr. Effron testifies that this obviously understates the interest rate earned by the investor on deposits actually made. He states further that in situations where the account balance is declining rather than increasing, using the year-end balance will overstate the return; if the account balance is increasing, the use of year-end balances will understate the return. The same principle applies to the calculation of the earned ROE when rate base is increasing or decreasing.

Prior to PA 98-0015, Schedule FR A-3 of Ameren Ex. 2.4 provided that the ROE collar computation be based on the average rate base, by reference to the average of the rate base on Schedule FR B-1, line 36 as of December 31, 2012 and the rate base on Schedule FR B-1, line 36 as of December 31, 2011. In order to continue to use average rate base in the ROE collar computation, the AG urges the Commission to order that Ameren Ex. 2.4, Schedule FR A-3 be amended as shown on Exhibit 1 to the AG's complaint initiating Docket No. 13-0501. The AG explains that the effect of this change is to apply the year-end capital structure, containing the common equity ratio shown on Ameren Ex. 2.4, Sch. FR D-1 (see Exhibit 1, Lines 6 and 36), to the average rate base investment, representing the change in rate base investment over the course of the year. Mr. Effron indicates that the capital structure enters into the formula rate template only in the form of the capital structure ratios, and is therefore not relevant to the rate base to be used in the ROE collar computation. He contends that the statutory requirement to use the year-end capital structure simply means that the year-end common equity ratio will be applied to the appropriately calculated rate base investment. The AG believes that this approach maintains the year-end relationship between debt and equity, and applying average rate base recognizes the growth of investment over the year. The AG considers this approach consistent with the terms of Section 16-108.5(c)(5) and (c)(2).

The effect of incorporating the requirement in PA 98-0015 to use year-end capital structure in the ROE collar computation, while retaining the use of average, actual rate base to determine AIC's actual return, is that AIC's actual ROE for 2012 was 9.51%, or 19 basis points more than the collar allows. (See Ameren Ex. 2.4, Sch. FR A-3, line 33-34 [allowed ROE was 8.82%, and maximum allowed ROE is 9.32%]) This results in a credit to ratepayers of \$3,381,000.

### **3. CUB Position**

Contrary to AIC's position, CUB argues that the revisions to the formula rate law effectuated by PA 98-0015 do not require use of a year-end rate base in the ROE collar calculation. Prior to the enactment of PA 98-0015, the approved formula rate protocols required use of average rate base for purposes of calculating both the reconciliation adjustment and the collar adjustment. CUB insists that nothing in PA 98-0015 dictates or authorizes a change to the ROE collar calculation previously approved.

When AIC changed the reconciliation rate base from average to year-end, however, CUB observes that the formula coincidentally changed Schedule FR A-3 relative to the calculation of the ROE collar calculation described in Section 16-108.5(c)(5). CUB contends that this change to the formula rate protocols was not authorized by PA 98-0015, and represents a reversal of the Commission's prior determinations in Docket No. 12-0001, where the Commission approved use of average rate base for the purpose of measuring the ROE collar adjustment. If AIC's changes to the calculation of the ROE collar from average rate base to year-end rate base are left unaltered, CUB is concerned that AIC will collect revenues that do not reflect its actual costs, resulting in rates that are not just and reasonable under Sections 9-101 and 16-108.5(c) of the Act.

CUB states further that the capital structure enters into the formula rate template only in the form of the capital structure ratios, and is therefore not relevant to the rate base to be used in the ROE collar computation. AIC witness Stafford's claim that the AG's method has the effect of replacing year-end capital structure balances with average capital structure balances, including common equity is incorrect. CUB argues that AG witness Effron is not proposing any changes to the capital structure used to develop the capital ratios used in calculating the rate of return. Mr. Stafford, CUB continues, is also wrong that Mr. Effron's proposal has the effect of understating the common equity amount supporting reconciliation revenue requirement. CUB asserts that Mr. Effron has not proposed any changes that affect the reconciliation revenue requirement either directly or indirectly.

As CUB understands it, the essence of AIC's opposition to Mr. Effron's ROE collar calculation is that using the average rate base to calculate the ROE collar adjustment contradicts the express provisions of EIMA and must be rejected. CUB states that AIC continually relies on a statutory construction argument in an attempt to show that EIMA's overriding requirement is to use year-end data. To support this argument, AIC points to Section 16-108.5(d)(1) of the Act, which requires the inputs to

the formula rate to be based on final historical data. CUB acknowledges AIC's claim that past attempts to read "final historical data" as allowing "average data" have been reversed. In response, CUB argues that AIC's point begs the question: if the General Assembly's directive to use year-end data in the ROE collar calculation was so clear, why does the provision regarding the ROE collar calculation not specify the rate base measurement to use? CUB states that this question is answered in AIC's own brief: where the legislature includes particular language or terms in one section of a statute but omits it in another, it is generally presumed the legislature acts intentionally and purposely in the inclusion or exclusion of the different terms. (AIC Initial Brief at 18, citing In re J.L., 236 Ill.2d 329, 341 (2010); see also Bridgestone/Firestone, Inc. v. Aldridge, 179 Ill.2d 141, 154-55 (1997)) Overall, CUB maintains that the purpose of EIMA is not to maximize AIC's revenue requirement by accepting an interpretation of EIMA, where no explicit directive is provided, that maximizes the earned ROE calculation.

#### **4. Staff Position**

In presenting its position, Staff quotes from subsections (c)(2), (c)(5), and (d)(1) of Section 16-108.5 of the Act. Staff then states that its calculation of the ROE collar in Docket No. 13-0301 utilizes a year-end rate base. Staff concurs with AIC's position on this issue.

#### **5. Commission Conclusion**

How to calculate the ROE collar is certainly one of the more contested issues in this proceeding. The AG and AIC go to great length to explain their respective positions. The Commission's decisions in Docket Nos. 12-0001 and 12-0293 reflect its belief that use of the average rate base most accurately reflects AIC's costs. The Commission continues to believe that use of the average rate base will produce a dollar balance that correctly represents the actual capital supplied by equity investors to support AIC's rate base over the course of the year for which the ROE is being calculated. Nevertheless, the General Assembly has indicated through PA 98-0015 that it intends for year-end rate base to be used in determining rates. While some ambiguity arguably exists when it comes to the ROE collar calculation, the Commission finds that the overall intent of the General Assembly, as reflected in PA 98-0015, includes the use year-end rate base to calculate the common equity balance for the purpose of determining the earned ROE for the collar calculation. Accordingly, the changes sought by the AG concerning the collar calculation will not be adopted and the revisions concerning this issue approved in Docket No. 13-0385 will stand.

### **B. Reconciliation Interest Calculation**

#### **1. AG Position**

The AG states that a key difference between the formula rate process and traditional ratemaking is that the formula rate statute allows the utility to restate its



revenue requirement using historical data from the prior year reported in the FERC Form 1. The AG notes that the historical revenue requirement for reconciliation purposes is determined using actual FERC Form 1 data, subject to Commission review, and is compared to the revenue requirement in effect during the historical year. The statute allows the utility to collect interest on the reconciled revenue requirement as follows:

Any over-collection or under-collection indicated by such reconciliation shall be reflected as a credit against, or recovered as an additional charge to, respectively, with interest calculated at a rate equal to the utility's weighted average cost of capital approved by the Commission for the prior year, the charges for the applicable rate year. (Section 16-108.5(d)(1))

The AG notes the statute directs the Commission to allow interest on the over- and under-collections "indicated by such reconciliation;" and while the statute could have directed the Commission to apply interest to the full reconciliation balance, it only authorizes interest on the "over-collection or under-collection." The AG states this requires the Commission to determine the actual over- or under-collection, taking into consideration the cash flow effect of the formula rate process. The AG believes the Commission should apply interest to the utility's actual cash expense to conform to the legislative intent that the reconciliation reflects "the actual cost information for the applicable calendar year." The AG notes the utility pays income taxes on the revenues it receives, and the amount of taxes actually paid by the utility in a given calendar year depends on the revenues actually received. Thus, regardless of whether the reconciliation revenue requirement is larger or smaller than that in effect during the year, the determination of the actual cash over- or under-collection indicated by the reconciliation will be affected by the timing of the payment of the income tax expense.

The AG contends that the payment of income taxes in the year revenues are received by the utility has a substantial effect on the actual cash flow of the utility. In a situation where the utility has under-recovered its reconciled revenue requirement, which is the opposite of AIC's present circumstance, Mr. Effron testified that the non-payment of income taxes (because revenues are not yet received) reduces the cash needed to fund an under- or over-collection. The AG states that AIC witness Stafford confirmed that the AG's theory was correct on this issue. The AG asserts that a utility should not receive interest to compensate it for the payment of taxes in 2012 when those taxes will not be paid until the utility receives the under-collected revenues in 2014.

The AG asserts that when the Commission applied the short term interest rate, which was 2.3% in 2011, the failure to adjust the over- or under-collection to account for the income tax effect was "relatively immaterial." However, with the substantial increase in the interest rate to equal the weighted average cost of capital ("WACC") (8.163% for AIC) now required under PA 98-0015, the AG suggests that accounting for the tax effect of the delay associated with the reconciliation has become significant. In AIC's pending annual formula rate docket, where the reconciliation results in an over-collection

necessitating a credit to consumers, the AG opines that accounting for the timing of tax payments will reduce the credit to consumers, while in future years, if the reconciliation balance results in a charge, consumers will properly benefit when income tax deferrals are properly considered.

The need to apply the reconciliation interest to a net reconciliation balance was raised by the AG in Docket No. 11-0721, ComEd's first formula rate docket, where the Commission expressed concerns about the completeness of the record, and did not make a definitive ruling. In the instant docket, the AG suggests that a full record has been developed, demonstrating that it is necessary to account for the tax effect in determining the under- or over-collection indicated by the reconciliation that is subject to interest.

The AG notes that the formula rate law consistently recognizes and incorporates Commission authority to review costs and accounting treatment and to apply Commission rules and practices. For example, Section 16-108.5(d)(3) authorizes the Commission:

to enter upon a hearing concerning the prudence and reasonableness of the costs incurred by the utility to be recovered during the applicable rate year .... The Commission shall apply the same evidentiary standards, including but not limited to, those concerning the prudence and reasonableness of the costs incurred by the utility... as it would apply in a hearing to review a filing for a general increase in rates under Article IX of this Act. (Section 16-108.5(d)(3))

The AG states that the recognition of the effect of deferred taxes is a well-established regulatory practice. For example, the AG notes that electric utilities must include a schedule of accumulated deferred income taxes ("ADIT") in rate case filings, and all jurisdictional amounts of recorded ADIT credit and debit balances are regularly included- in rate base. In AIC's initial formula rate case, the AG notes that an adjustment to rate base was made to recognize the vacation reserve, and the adjustment was offset by related ADIT balances. The AG states that other ADIT related issues were addressed in Docket No. 12-0001 involving deferred compensation; plant additions; and Step-Up Basis Metro East. The AG asserts that all these issues all involved rate base assets that earn a return, and the ADIT balance associated with the asset was necessarily included in rate base to achieve the required consistency. Under the formula rate law, the under- or over-collection indicated by the reconciliation is not included as a rate base item, but the utility can recover interest at a rate equal to the WACC. In order to be consistent with standard regulatory practice that "matches" ADIT elements to the associated assets included in rate base, the AG asserts that the effect of deferred taxes on the under- or over-collection indicated by the reconciliation balance subject to interest must be recognized.

AG witness Brosch testified that applying interest to an adjusted under- or over-collections to reflect the income tax effect is also completely consistent with Generally

Accepted Accounting Principles (“GAAP”) procedures and rules. Under GAAP accounting rules, the AG states that if there is an under-collection of revenues, the utility is required to record a deferred income tax expense related to the reconciliation balance because it is able to defer the payment of income taxes while awaiting recovery of reconciliation revenues. These deferrals of income tax expense have the effect of reducing the amount of capital the utility must carry in support of the under-collected reconciliation revenue requirement. The AG indicates that full and complete accounting for income tax expenses recognizes that income taxes have a major impact on expenses payable in more than one accounting period.

The AG opines that the delayed collection (or refund) of reconciliation revenues under formula ratemaking creates a “taxable temporary difference” under GAAP rules, which occurs because the utility pays taxes on revenues actually received in the RY rather than on the revenue level indicated in the reconciliation revenue requirement and balance. The AG notes that AIC agrees that reconciliation revenues are recorded as per book revenues in the RY (either as excess or deficiency revenues) but these revenues will not become income taxable until the year they are charged or credited to ratepayers.

AIC witnesses argued that the fact that the utility does not pay taxes until it receives the associated revenues does not provide the utility with cash, which the AG believes ignores the effect of the timing of the payment of income taxes. The AG argues that changes in ADIT provide incremental cash flows to utilities through the change in timing of the payment of cash income taxes associated with such tax deferrals, and suggest that the essential purpose of deferred taxes is to provide the taxpayer with low-cost or no-cost capital by allowing the taxpayer to retain cash that otherwise would have been paid in taxes. The AG states that the statute indicates that interest is to be applied to “the under- or over-collection indicated by the reconciliation” so that the utility’s actual costs are covered. Because the utility’s actual cost is affected by income taxes, the AG asserts it is necessary to incorporate the effect of income taxes so that interest is only applied to the net-of-tax over- and under-collections.

The AG notes that AIC Ex. 2.4, Schedule FR A-4 contains the data for the reconciliation computation, including the application of interest to the under- or over-collection indicated by the reconciliation. While the question of which provisions, schedules, and appendices of Exhibit 2.4 require a Section 9-201 action to be changed and which do not, will be addressed after the expected order in this docket, the AG proposes various changes to Schedule FR A-4 without waiving any arguments or positions about whether this change in fact requires a change in the formula rate structure or protocols. The AG details in its brief the manner in which it believes Schedule FR A-4, Reconciliation Computation, should be amended so as to incorporate this proposal, as well as attaching its proposed new schedule as Exhibit 2 to its Initial Brief.

The AG notes that in its Initial Brief, AIC first refers to the language of the statute 16-108.5(d)(1) of the Act and suggests that the precise mechanics of the reconciliation

charge with interest are found in that section. The AG believes that a review of this language, however, shows that it is far from precise, noting that 16-108.5(d)(1) limits the interest charge to the “over-collection or under-collection” of an amount “indicated by such reconciliation.” Although it could have, the AG submits that the statute does not provide that the full reconciliation balance shall be subject to interest or specify the mechanics of how the over-collection or under-collection amount is to be qualified.

The AG argues that implementation of this provision requires the Commission to analyze and determine the amount of money that represents the “over-collection or under-collection indicated by such reconciliation” because the statute does not say that interest is applied to the entire reconciliation balance. The AG submits that analysis requires the Commission to evaluate the over-collection or under-collection under established regulatory principles.

The AG opines that the precise mechanics for assessing the over- or under-collection must refer to regulatory and evidentiary standards concerning prudence and reasonableness, and suggests that both the Commission and Illinois courts recognize that ADIT quantifies the income taxes that are deferred when the tax law provides for deductions with respect to an item, in a year other than the year in which the item is treated as an expense for financial reporting purposes.

The AG asserts that while the over- or under-collection amount arising from the reconciliation is not in rate base, the interest provision is intended to compensate the utility for the financing costs associated with the fact that some portion of its costs are recovered as taxable revenues (or returned in the case of over-recoveries) in a subsequent year. The AG believes that if utility income tax payments are reduced due to delayed recovery or return of reconciliation revenues, because of deferred income taxes, it is unreasonable to ignore the tax deferral impacts upon the net cash flow amounts indicated by the reconciliation that is actually under- or over-collected.

While the AG agrees with AIC when it notes in its Initial Brief that the EIMA is a highly specific law, the AG does not believe that means every detail of ratemaking is specified conclusively in the statute. While AIC argues that the over-or under-collection of revenues indicated by the reconciliation is the difference between the revenue requirement that was in effect for the prior rate year and the actual revenue requirement for the prior year, the AG contends this ignores the actual net-of-income tax cash flows arising from such reconciliation. Under these circumstances, the AG submits that AIC should not be made to pay interest on the full reconciliation amount, but rather should pay interest to ratepayers only on the excessive cash revenue amount collected, reduced by the corresponding cash required for earlier payment of income taxes. The AG does not believe that the absence of a specific reference to taxes in connection with the over-collection or under-collection indicated by such reconciliation does not mean that the effect of taxes should be ignored.

While AIC also argues in its Initial Brief that applying the statutory interest rate to the net-of-tax over- or under- collection effectively reduces the statutory interest rate,

the AG suggests that this argument simply ignores the substance of a proposal and focuses instead on whether it can be expected to increase or decrease AIC revenues as the AIC's investments increase. The AG suggests that calculating the reconciliation over-or under-collection on a net cash flow basis properly recognizes that the utility will only avoid or incur interest expense on the net-of- tax over- or under-collection, which does not change the applicable interest rate.

## **2. AIC Position**

AIC notes that AG witnesses Brosch and Effron both recommend that before calculating reconciliation interest, the reconciliation amount for both over- and under-recoveries be reduced by the applicable tax rate, to derive a reconciliation balance net of deferred income taxes before application of the reconciliation interest rate. AIC states that the AG's proposal would require changes to the formula rate template "Reconciliation Computation." Mr. Brosch claims this approach recognizes AIC's actual incremental invested capital in financing such balances (for an under-recovery). Although AIC notes it is in an over-recovery position in this case, Mr. Brosch and Mr. Effron focus their concern on under-recoveries. AIC indicates that they argue that for an under-recovery, the current income tax expense is lower than it would have been, income taxes are not actually paid until the reconciliation balance is recovered, and the deferral in the payment of income taxes is a real cash benefit that should be netted against the reconciliation balance prior to calculation of interest for the reconciliation balance.

AIC argues that this proposal should be rejected because the EIMA's detailed provisions do not provide for such an adjustment to the reconciliation amounts when calculating interest, the proposal would harm both ratepayers and the utility, and the proposal is based on the incorrect premise that AIC has real cash flow benefits arising from the effects of deferred taxes on over or under collections.

AIC notes that the EIMA requires that a participating utility file, on or before May 1 of each year, updated cost inputs to the performance-based formula rate for the applicable rate year and the corresponding new charges, and this update filing also must include a reconciliation. The reconciliation reconciles "the revenue requirement that was in effect for the prior rate year (as set by the cost inputs for the prior rate year) with the actual revenue requirement for the prior rate year (determined using a year-end rate base) that uses amounts reflected in the applicable FERC Form 1 that reports the actual costs for the prior rate year." AIC notes that the EIMA also provides that the reconciliation must be "with interest," which is "calculated at a rate equal to the utility's WACC approved by the Commission for the prior rate year." AIC states that the precise mechanics of the reconciliation charge with interest are as follows: "Any over-collection or under-collection indicated by such reconciliation shall be reflected as a credit against, or recovered as an additional charge to, respectively, with interest calculated at a rate equal to the utility's WACC approved by the Commission for the prior rate year, the charges for the applicable rate year."

AIC contends that the question raised by the AG witnesses' proposal to calculate interest on the reconciliation balance net of taxes is whether the EIMA provides for such a calculation, and AIC suggests that it does not. AIC notes that the EIMA is a highly specific law that sets out in express detail the exact functioning of the formula rate, and in detailing the process for calculating interest on reconciliation amounts, no provision is made for the calculation of interest on over- or under-collection amounts to be net of taxes. AIC argues that the "framework of the Act" does not permit the discretion that Mr. Brosch relies on to support his position.

As indicated, any over-collection or under-collection in the formula rates for a given year is either "reflected as a credit" or "recovered as an additional charge," with interest. When determining the amount of the "interest," AIC notes the EIMA specifies what the interest amount is calculated on: the credit or additional charges, which are the "over-collection or under-collection indicated by such reconciliation." AIC states the EIMA further defines "such reconciliation" as the "reconciliation of the revenue requirement that was in effect for the prior rate year (as set by the cost inputs for the prior rate year) with the actual revenue requirement for the prior rate year (determined using a year-end rate base) that uses amounts reflected in the applicable FERC Form 1 that reports the actual costs for the prior rate year."

AIC notes the statute does not say that the over-collection or under-collection must be net of taxes, or that the reconciliation indicates the over- or under-collection must be net of taxes (though ADIT are already reflected in the reconciliation calculation). AIC contends the statute refers strictly to the "over-collection or under-collection" as the basis for the amount of credits or additional charges and so the basis for the amounts to which interest is applied. The over-collection or under-collection is the difference between the revenue requirement that was in effect for the prior rate year and the actual revenue requirement for the prior rate year. Thus, AIC argues the over-collection or under-collection is a set amount under the statute, and no adjustment is contemplated. AIC does not believe the EIMA permits the adjustment of the over-collection or under-collection amount to "reduce the reconciliation balance that earns interest so that interest applies only to the net-of-tax incremental capital investment driven by such over or under-recovery of revenues."

AIC suggests this is confirmed elsewhere in Section 16-108.5 where the EIMA does require that the amount of certain credit or surcharge items be adjusted for taxes. In the ROE collar calculation, AIC notes the utility is required to apply a credit or charge that "reflects an amount equal to the value of that portion of the earned rate of return on common equity that is more than 50 basis points higher [or lower] than the rate of return on common equity calculated pursuant to paragraph (3) of this subsection (c)...for the prior rate year, adjusted for taxes." Thus, AIC asserts it is clear the legislature was aware generally of the need to adjust items for taxes, and specifically that credit or charge amounts may be adjusted for taxes. Nevertheless, the legislature did not specify such an adjustment for the over or under collection reconciliation balance. As a matter of statutory construction, AIC states where the legislature includes particular language or terms in one section of a statute but omits it in another, it is generally

presumed the legislature acts intentionally and purposely in the inclusion or exclusion of the different terms. In re J.L., 236 Ill. 2d 329, 341 (2010); see also Bridgestone/Firestone, Inc. v. Aldridge, 179 Ill. 2d 141, 154-55 (1997) (“A court may not inject provisions not found in the statute, however desirable they may appear to be.”)

AIC also submits that the AG's proposal would alter the statutory interest calculation to the detriment of both ratepayers and the utility. Like the over-collection and under-collection amount to which interest is applied, AIC states the EIMA also specifies exactly what the interest rate should be: “a rate equal to the utility's WACC [WACC] approved by the Commission for the prior rate year.” AIC believes the end result of the AG's proposal, however, is that the interest on reconciliation over- or under-collections would effectively be something less than the WACC, as the AG's proposal has the effect of reducing the reconciliation balances to which interest is applied which results in the amount of interest then calculated to be less than the amount of interest calculated had the WACC been applied to the full under- or over-collection. AIC submits that this violates EIMA's strict provisions on how interest is calculated, and in itself is another reason to reject AG's proposal.

AIC also suggests that the AG's proposal is a detriment to ratepayers and the utility, in that the purpose of the reconciliation is to allow the utility to recover the full reconciliation balance, with interest (in an under-collection), or allow the ratepayer recover the full reconciliation balance, with interest (in an over-collection). In providing for interest, AIC suggests the EIMA's reconciliation provision compensates the utility or ratepayer for the time value of money, which the EIMA has determined is the WACC, and submits that the AG would deprive the ratepayer (in an over-collection) and the utility (in an under-collection) of this time calculation.

The AG's witnesses allege that changes in ADIT related to reconciliation balances provide incremental cash flows to the utility, however AIC submits that the record shows that this is not the case. AIC believes the question is not whether AIC can defer paying income taxes, but rather when and how AIC will get actual cash in hand from the reconciliation balances. Contrary to the AG witnesses' position, AIC states that neither the ADIT balance nor the change in ADIT represents actual cash in hand, rather it is fundamental to utility ratemaking that income tax benefits are normalized in rates as the underlying asset or liability giving rise to the deferred tax benefit is amortized or depreciated. AIC submits the most common example of this normalization is the difference between tax and book depreciation on utility plant assets included in rate base. The associated ADIT is deducted from rate base not because the ADIT balance itself, or the change in the ADIT balance, has generated a real source of cash, but rather because the benefits of accelerated tax depreciation rates have resulted in AIC being allowed to reduce its current income taxes payable. AIC states that this benefit is not flowed through rates immediately, but is normalized, or averaged, in rates to correlate more closely with the useful life of the underlying assets giving rise to the tax deduction.

While the AG focuses on situations in which there is an under-collection that the utility will need to recover as an additional charge to ratepayers, AIC suggests there is no cash received from deferred income taxes associated with the charges to reverse an under-collection, as the deferred income taxes correspond to accounting accruals for revenues to be received. If AIC had billed and collected the revenues that corresponded to the recording of deferred income taxes, then there would be actual cash in hand, and under that scenario, the deferral of income tax payments would generate a cash benefit. However, AIC states that in this case, there is no source of cash to support the AG's proposed netting of income taxes against the reconciliation balance.

AIC submits that the proposals to deduct ADIT from the balance used to calculate interest on the reconciliation also fail to address the reversal of the temporary timing difference for the ADIT deduction they propose. AIC notes that deferred taxes on the reconciliation balance represent a temporary timing difference that reverses when the under-recovered reconciliation amounts are recovered in rates, although neither Mr. Brosch nor Mr. Effron has proposed to normalize their ADIT deduction and, furthermore, there is no opportunity to do so, because the reconciliation calculation is performed one time in each RY. AIC states that in this proceeding, that one-time calculation is for the 2012 reconciliation balance, and there is no opportunity to normalize, or amortize, the ADIT reduction that the AG proposes in this case, thus making a temporary timing difference permanent.

AIC suggests it is also unclear where the cash to pay income taxes on interest income on an under-recovered balance, or cash to pay income tax expense on over-recovered balances will come from, under AG's proposal. Interest becomes taxable to AIC as a form of revenue, and AIC must pay income taxes on the interest income. AIC therefore needs sufficient cash to be able to pay taxes on that balance. Otherwise AIC would not be collecting the full interest at the WACC interest rate. AIC notes that the AG made a similar proposal in Docket No. 11-0721, which the Commission rejected. (Commonwealth Edison Co., Docket No. 11-0721, Order at 167 (May 29, 2012)) AIC therefore submits that the AG proposal to calculate reconciliation interest on a balance net of taxes should be rejected in this proceeding.

AIC states that both AG and CUB acknowledge in their Initial Briefs that the timing of over- or under-collections creates a temporary tax timing difference, however as AIC explained in its Initial Brief, the AG and CUB fail to address the reversal of this temporary timing difference. AIC notes that deferred taxes on the reconciliation balance represent a temporary timing difference that reverses when the under-recovered reconciliation amounts are recovered in rates; however the AG and CUB propose a one-time ADIT deduction for which there is no opportunity to normalize, or amortize. In short, the AG proposes to make a temporary timing difference permanent.

AIC asserts that both the AG and CUB's arguments also suggest a circular result. AIC notes that CUB acknowledges in its Initial Brief that the deferred taxes associated with formula rate reconciliation balances are "dynamic." CUB and the AG's



proposal changes the amount of interest calculated, which in turn would have its own tax effect. AIC notes that in the over-collection situation presented by Docket No. 13-0301, CUB and the AG's proposal would reduce the interest amount credited to ratepayers. Because interest expense is deductible, AIC suggests this reduction in interest expense would mean higher taxes and so the AG and CUB's after-tax reconciliation balance would be too high, while lowering the after-tax balance would lower the interest credited to ratepayers further, in turn increasing taxes and so on. In an under-collection situation, CUB and the AG's proposal would reduce the interest income amount received by the utility. This would decrease the utility's taxes, so the AG and CUB's after-tax reconciliation balance would be too low. Increasing the after-tax balance would reduce interest income further, in turn decreasing taxes and so on. This dynamic aspect of the effect of the AG's proposal is also why, as AIC explained in its Initial Brief, it is unclear where the cash to pay income taxes on interest income on an under-recovered balance, or cash to pay income tax expense on over-recovered balances will come from, under the AG's proposal.

AIC asserts that not only does the AG and CUB's proposal ignore the statute, which sets a specific (and static) amount on which interest is to be calculated, it ignores both the temporary nature and dynamic effect of its proposed changes.

### **3. Staff Position**

Staff indicates that it cannot support the proposal made by AG witnesses Brosch and Effron to net ADIT related to the reconciliation balance before calculating interest. Staff recommends that the proposal, regardless of its merits, should be rejected because the Act, in particular Section 16-108.5(d)(1), does not state that the reconciliation amount is to be reduced by ADIT. Staff notes that Section 16-108.5(d)(1) provides simply that:

Any over-collection or under-collection indicated by such reconciliation shall be reflected as a credit against, or recovered as an additional charge to, respectively, with interest calculated at a rate equal to the utility's WACC approved by the Commission for the prior rate year, the charges for the applicable rate year. (Section 16-108.5(d)(1))

Staff states that when interpreting a statute, the primary objective is to ascertain, and give effect to, the intent of the legislature, citing Metro Utility Co. v. Illinois Commerce Commission, 262 Ill. App. 3d 266 (1994). Staff also notes that courts have generally held that the best indication of what the legislature intended is the statutory language itself, while clear and unambiguous terms are to be given their plain and ordinary meaning, citing West Suburban Bank v. Attorneys Title Insurance Fund, Inc., 326 Ill. App. 3d 502 (2001). Staff states that a general rule of statutory construction is also that where statutory provisions are clear and unambiguous, the plain language as written must be given effect, without reading into it exceptions, limitations, or conditions the legislature did not express. (Davis v. Toshiba Machine Co., 186 Ill.2d 181 (1999)) Staff notes that the EIMA requires that any reconciliation over-, or under-, collection be

refunded or recovered with interest, and suggests that the phrase “[a]ny over-collection or under-collection” refers to the whole reconciliation balance and not some derivative thereof. Staff does not believe that there is language in the section providing for ADIT to reduce the reconciliation balance.

Staff asserts that CUB mischaracterizes Staff’s position regarding the net-of-tax recommendations proposed by AG witness Brosch. In its Initial Brief, Staff notes that it specifically states that Staff cannot support the proposal made by Mr. Brosch and Mr. Effron to “net ADIT related to the reconciliation balance before calculating interest,” because it would be contrary to the law which does not indicate that interest is to be applied to only a portion of the reconciliation balance.

#### **4. CUB Position**

CUB states that the “reconciliation adjustment” is calculated by multiplying the “reconciliation balance” by the interest rate, and the reconciliation balance is the total difference between the revenue requirement actually incurred in 2012 and the revenue requirement that the Commission determined in Docket No. 12-0293. CUB notes that difference is collected from or credited to customers, with interest. CUB suggests that AIC has miscalculated the reconciliation balance on which its interest rate should be applied by failing to recognize the incremental income tax expense associated with the early over-recovery of revenues. Because AIC over-recovered for 2012, CUB notes that the reconciliation balance is returned to ratepayers. CUB states that AIC incurs incremental income tax expenses associated with the early over-recovery of revenues, and that those incremental expenses reduce the actual capital AIC realized from the temporarily-excessive revenues. In this case, CUB states that reduces the amount refundable to customers, however CUB believes that is the correct result, because the income tax expense AIC paid on the over-recovered balance reduced the amount of capital it actually realized. CUB submits that the interest on the reconciliation balance should be calculated only on the net over-recovery, rather than the gross.

CUB believes that the net of tax approach does now, and will continue to, properly capture deferred tax benefits and it is more accurate in accounting for all of the economic impacts caused by revenue requirement reconciliation. CUB argues that this is so, even though computing interest on the reconciliation balance net of income taxes will not immediately benefit ratepayers. In future cases, CUB believes that whenever the reconciliation balance is positive, which is likely to often be the case, as a result of the significant capital investments required of participating utilities under the EIMA, the net of tax approach will protect ratepayers from excessive reconciliation balances.

CUB notes that the Act dictates that in the formula rate reconciliation:

Any over-collection or under-collection indicated by such reconciliation shall be reflected as a credit against, or recovered as an additional charge to, respectively, with interest calculated at a rate equal to the utility's

WACC approved by the Commission for the prior rate year, the charges for the applicable rate year. (Section 16-108.5(d)(1))

CUB notes that this language directs the Commission to calculate interest on the over- or under- collection at a company's WACC, however CUB suggests that it does not address whether the reconciliation balance (a term never once used in the statute) should be gross or net-of-tax. CUB states that it is up to the Commission to determine the specific procedures to be employed in calculating over- and under-collections and related interest amounts, within the framework of the Act.

CUB argues this issue is particularly important as a result of the amendments to subsections (c) and (d) of Section 16-108.5 of the Act, which now require that the interest on the reconciliation balance must reflect AIC's actual WACC. CUB notes that previously, the Commission had ordered that the short-term debt rate should be the interest rate on reconciliation balances, however, PA 98-0015 changed the reconciliation interest rate to the utility's WACC – a significantly higher interest rate than short-term debt, which, depending on the size of the reconciliation balance, could represent a substantial portion of the net revenue requirement. CUB suggests that applying the WACC to only the net-of-tax reconciliation balance reduces the overall amount of interest by about 40 percent.

CUB notes that because the reconciliation balance is positive this year (as a result of over-recovery from ratepayers), calculating interest on the net-of-tax (rather than the gross) reconciliation balance will lessen the refund ratepayers will receive. In years where the reconciliation balance is negative, as a result of under-recovery from ratepayers, AIC will collect the reconciliation balance from ratepayers and pay income taxes on that balance.

While the Commission has not previously made a determination on this issue, CUB believes this issue is now ripe and the evidence in this record supports the net-of-tax recommendation of the AG. CUB notes that in Docket No. 11-0721, AG witness Brosch raised concerns about the issue of the reconciliation balance that is allowed to earn interest, however, at that time, the Commission did not make a definitive ruling, citing concerns about the completeness of the record. (Docket No. 11-0721, Order at 167) CUB notes that Mr. Brosch also raised the issue in Docket Nos. 12-0001 and 12-0293, AIC's initial formula rate setting docket and its first update, but the net-of-tax concern was not addressed in the Commission's analysis and conclusions in those orders.

CUB believes the delayed collection of reconciliation revenues in 2012 created a "taxable temporary difference" under GAAP, Accounting Standards Codification 740-10-30-5. CUB states that is because reconciliation revenues are recorded as book revenues in the year earned (either as excess or deficiency revenues), but are not income taxable until the year they are approved by the Commission and charged or credited to ratepayers. CUB opines that because they are not taxable until a later date, they result in "deferred" taxes, and utilities continuously make large capital investments

that persistently generate large income tax deductions which must be normalized by recording ADIT under the GAAP rules. From a ratemaking perspective, CUB believes an ADIT balance represents a significant, zero-cost source of capital to a utility, which is why ADIT balance typically reduces rate base. CUB notes however, that the formula rate is different than traditional ratemaking – the deferred taxes associated with formula rate reconciliation balances are more dynamic, and the template used to calculate the reconciliation balances is formulistic. As a result, CUB asserts that more precise accounting for reconciliation interest is possible by simply applying the interest rate only to the net-of-tax reconciliation balance.

CUB notes that this is an adjustment not to the reconciliation balance itself, but to the portion of the balance on which interest is calculated, and impacts only the interest portion of the reconciliation adjustment. CUB does not believe there is any dispute that when AIC ultimately recovers (or, in this case, refunds) the reconciliation balance, the net cash it receives (or refunds) is the reconciliation balance net of income taxes, and the net cash is what AIC has foregone (or what it is holding pending the refund), and it is this net cash requirement (or source) on which the interest should be calculated.

CUB notes that AG witness Brosch explained the changes to AIC's schedules that are required in order to apply his recommendation to calculate interest only on the net-of-tax reconciliation balance. CUB recommends that the Commission adopt those changes, which appropriately compute the interest on the reconciliation balance by recognizing the impact of income taxes.

CUB suggests that AIC's discussion of the appropriate reconciliation balance on which interest must be calculated in its Initial Brief suffers from several flaws. CUB notes that the language of the EIMA does not prescribe how the reconciliation balance (on which interest is based) should be calculated, while AIC also fails to recognize in its arguments that the reconciliation amount produces no current cash benefit because it is not recovered until a year later. CUB also believes that AIC fails to acknowledge that, although the reconciliation amount has not yet been recovered from ratepayers, AIC has realized tax savings due to higher tax deductions. CUB submits the ADIT related to the reconciliation balance are in fact already recorded on AIC's books and must be acknowledged. CUB submits that AIC's claims that it will not be made whole by calculating interest only on the net-of-tax reconciliation balance ignores the fact that the carrying charge has an offsetting tax deduction for interest expense.

CUB submits that the net of tax approach it supports does now, and will continue to, properly capture deferred tax benefits and it is more accurate in accounting for all of the economic impacts caused by revenue requirement reconciliation. CUB notes that this is so, even though computing interest on the reconciliation balance net of income taxes will not immediately benefit ratepayers in this proceeding. CUB submits that in future cases, whenever the reconciliation balance is positive, which is likely to often be the case, as a result of the significant capital investments required of participating utilities under the EIMA, the net of tax approach will protect ratepayers from excessive reconciliation balances.

## **5. Commission Conclusion**

The Commission recognizes that there is a difference of opinion between the parties in determining how to properly calculate the interest to be paid or refunded as part of the reconciliation process under the EIMA. The AG believes that before calculating reconciliation interest, the reconciliation amount for both over- and under-recoveries should be reduced by the applicable tax rate, to derive a reconciliation balance net of deferred income taxes before application of the reconciliation interest rate. The AG believes that the precise mechanics for assessing the over- or under-collection should refer to regulatory and evidentiary standards concerning prudence and reasonableness, and believes the EIMA is not as cut and dried as Staff and AIC assert. The AG states that the statute indicates that interest is to be applied to “the under- or over-collection indicated by the reconciliation” so that the utility’s actual costs are covered. Because the utility’s actual cost is affected by income taxes, the AG asserts it is necessary to incorporate the effect of income taxes so that interest is only applied to the net-of-tax over- and under-collections.

Likewise, CUB supports the AG's proposal, indicating that it believes this approach conforms to GAAP, and will properly capture deferred tax benefits, and is a more accurate accounting for all of the economic impacts caused by revenue requirement reconciliation.

AIC, however, argues that the EIMA’s detailed provisions do not provide for such an adjustment to the reconciliation amounts when calculating interest. AIC also contends the proposal would harm both ratepayers and the utility, and the proposal is based on the incorrect premise that AIC has real cash flow benefits arising from the effects of deferred taxes on over or under collections. AIC notes that the EIMA is a highly specific law that sets out in express detail the exact functioning of the formula rate, and in detailing the process for calculating interest on reconciliation amounts, no provision is made for the calculation of interest on over- or under-collection amounts to be net of taxes. AIC argues that the “framework of the Act” does not permit the discretion that Mr. Brosch relies on to support his position.

AIC notes the statute does not say that the over-collection or under-collection must be net of taxes, or that the reconciliation indicates the over- or under-collection must be net of taxes (though ADIT are already reflected in the reconciliation calculation). AIC contends the statute refers strictly to the “over-collection or under-collection” as the basis for the amount of credits or additional charges and so the basis for the amounts to which interest is applied.

Staff indicates that it cannot support the proposal made by the AG to net ADIT related to the reconciliation balance before calculating interest. Staff recommends that the proposal, regardless of its merits, be rejected because the Act, in particular Section 16-108.5(d)(1), does not state that the reconciliation amount is to be reduced by ADIT. Staff notes that the EIMA requires that any reconciliation over-, or under-, collection be

refunded or recovered with interest, and suggests that the phrase “[a]ny over-collection or under-collection” refers to the whole reconciliation balance and not some derivative thereof. Staff does not believe that there is language in the section providing for ADIT to reduce the reconciliation balance.

The Commission believes that both AIC and Staff have correctly interpreted the statute on this issue. The Commission notes that the EIMA is a statute which uses very specific language when discussing issues, and if it had been the legislature's intent, the reconciliation language could have been drawn to indicate that ADIT would have been a component of the calculation for any under- or over-collections. The Commission will therefore decline to adopt the AG's proposal for this issue.

## **C. Depreciation Expense**

### **1. Staff Position**

Staff proposes an adjustment to reflect the incremental amount of depreciation expense and related changes to rate base components due to the utilization of depreciation rates from AIC's updated depreciation rate study that became effective January 1, 2013.

Staff notes that it recommends reflecting the impact of the utilization of AIC's updated depreciation rates only in the FY Revenue Requirement. The RY Revenue Requirement is based on 2012 actual information, and would, therefore, not be affected by the new 2013 depreciation rates. Staff states the depreciation rate changes took effect in 2013 and should be reflected in the FY Revenue Requirement as it is based on actual 2012 data plus the impact of 2013 projected plant additions. Staff indicates that the depreciation rates that are in effect in 2013 are part of that impact, and notes that AIC accepted Staff's adjustment in direct testimony.

Staff notes that the AG has proposed changes to AIC's formula rate schedules to implement the depreciation expense adjustment that are different than the changes proposed by AIC. Staff indicates it is indifferent as to which formula rate schedules changes are approved by the Commission, since both proposals provide adequate disclosure to implement Staff's adjustment.

### **2. AIC Position**

AIC notes that in Docket No. 13-0301, it used the same depreciation rates—those reported in its 2012 FERC Form 1—for the reconciliation period and the plant additions during the FY, in accordance with the formula rate currently in effect. After filing its 2012 FERC Form 1 upon which the depreciation rates used in Docket No. 13-0301 were based, AIC states that it updated its depreciation rates. AIC indicates that Staff witness Ostrander proposes an adjustment to use the results of AIC's updated depreciation rate study to calculate depreciation expense and related rate base

components associated with the 2013 projected plant additions and the embedded utility plant at December 31, 2012.

AIC agrees that Mr. Ostrander's adjustment is appropriate because it appropriately matches the 2013 projected plant additions with the best available estimate of the 2013 depreciation expense. In other words, the RY revenue requirement is based only on 2012 actual information, including 2012 information regarding depreciation expense, and it is therefore appropriate to use the depreciation rates reported on AIC's 2012 FERC Form 1. However, the depreciation rate changes that occurred during 2013 are based on actual 2012 data plus the impact of 2013 projected plant additions—thus, the depreciation rates that occurred during 2013 should be used to calculate the revenue requirement in 2013.

AIC believes use of the updated depreciation rates for 2013 has the additional benefit of limiting the reconciliation adjustment that will be required in the formula rate reconciliation proceeding concerning 2013. As such, AIC opines that any impact on the revenue requirement that occurs as a result of the adjustment will be temporary. AIC and Staff agree that the depreciation rate changes that took effect in 2013 should be properly reflected in the FY revenue requirement. AIC notes that implementation of this adjustment will require a number of modifications to Schedule FR C-2 and its source information.

AIC notes that when a substantive proposal is made for the first time in briefing, opposing parties are deprived of an opportunity to review and contest the proposal, and the Commission is prevented from making findings based on record evidence. AIC states that the AG's additional modifications to Schedule FR C-2 and Workpaper 18 were proposed for the first time in the AG's Initial Brief, and notes that no witness testifies that these changes are appropriate—indeed, the AG's Initial Brief section titled "People's Recommendations" does not include a single citation to the record.

AIC asserts that it does not accept the AG's additional modifications to Schedule FR C-2. These recommendations are unsupported, improperly proposed, and will introduce unnecessary additional complexity to the formula rate. They illustrate the problematic nature of recommendations that are not subject to response or cross-examination—the AG's recommendations concerning Schedule FR C-2 appear to have been insufficiently developed or vetted. It appears to AIC that the AG's changes are also mathematically incorrect, noting that the AG seeks to insert a new Line 1a, which will represent a percent value for the adjustment to forecasted depreciation on plant. The AG's Initial Brief continues: "Line 5 should be modified to include Line 1a in its summation [of Line 1 through Line 4]." Lines 1, 2, 3, and 4 each represents a numerical dollar value. Thus, the AG's proposal, on its face, requires summation of a percent value (e.g. 5%) with numerical dollar values (e.g. \$5000). This is improper from a mathematical perspective, and undermines the AG's contention that the proposal would increase the transparency of Schedule FR C-2. If AIC had an opportunity to respond to the AG's proposal in testimony, or to conduct cross-examination on the subject, AIC

believes this issue might have been resolved, however, as it stands, the AG's proposal suffers from a fundamental flaw, and cannot be adopted.

However, AIC acknowledges the AG's concerns regarding the transparency of Workpaper 18, and states that it will endeavor to incorporate the AG's recommendations concerning Workpaper 18 into its compliance filing version of that Workpaper.

### **3. AG Position**

The AG supports in part and opposes in part AIC's proposed adjustment to its filing-year depreciation expense found on Schedule FR C-2 of its formula rate tariff. The AG believes that in the interests of transparency, the tariff revision and its accompanying workpaper should be modified to more clearly show the derivation of the adjustment.

The AG states that AIC's proposed adjustment, which implements changes in depreciation accrual rates that AIC made effective January 2, 2013, would result in an increase to filing-year depreciation expense of \$15.8 million in 2013's formula rate update, Docket No. 13-0301. The AG suggests that one approach to implementing the change in depreciation accrual rate that became effective on January 2, 2013 would be to simply use historical depreciation rates found in the 2012 FERC Form 1 in projecting depreciation on projected 2013 plant, and allow AIC to reconcile its 2013 revenue requirement with actual costs in 2014's formula rate update. The AG notes that while rates would be lower this year, this approach would lead to a significant increase in rates next year to reflect the larger depreciation expense. Further, the AG argues that consumers would be charged interest at the WACC on the under-collection indicated by the reconciliation in that year's formula rate update. So despite the fact that the use of 2013 depreciation rates deviates from the statutory directive to use actual historical data from the prior-year FERC Form 1 to determine the FY revenue requirement, the AG agrees that the new depreciation accrual rates should be implemented as an adjustment to the formula rate tariff and applied in Docket No. 13-0301. In future years when the depreciation accrual rate does not change, the AG believes that historical depreciation rates from the FERC Form 1 should be used in setting the FY revenue requirement.

However, the AG argues that the modifications to the FR schedules AIC proposes to implement this change fail to provide the information necessary for the formula "to operate in a standardized manner and be updated annually with transparent information," as required by Section 16-108.5(c) of the EIMA. The AG suggests that AIC present the derivation and calculation of its depreciation adjustment in a more transparent fashion, as the AG does not believe that the presentation in AIC's August 19, 2013 filing and workpapers provides the information necessary to identify the relevant depreciation adjustment.



The AG notes that Section 16-108.5(c) of the EIMA requires that an electric utility's rates be updated annually with transparent information that reflects the utility's actual costs to be recovered during the applicable rate year. Despite this requirement, the AG opines that Mr. Stafford admitted during cross-examination that a layperson reading AIC's filing would have to do some additional work and would need to look at Staff's schedule, and then at the data request that Staff relied on for purposes of making the proposed depreciation adjustment. The AG notes that Mr. Stafford stated that it is possible to incorporate the analysis from Staff Schedule 7.05 FY into AIC's workpapers, and added that the calculations "provide some additional transparency to the calculation and depreciation expense." The AG complains that rather than pointing to a particular piece of Staff testimony in a particular year's formula rate update proceeding, or to a data request response that may not be submitted into evidence in future formula rate update filings, Workpaper 18 should clearly indicate within its own four corners how the accrual study adjustment to projected depreciation was calculated.

The AG therefore recommends that the Commission direct AIC to adopt the following changes to Schedule FR C-2:

- A new Line 1a should be inserted labeled, in Column A, "Adjustment to Forecasted Depreciation on Plant for Study-Based Change to Depreciation Rate." The source for this data should be indicated in Column B as Workpaper 18. The data for this adjustment should be calculated as indicated by the caption and clearly inserted as Columns C, D, and E. Line 5 should be modified to include Line 1a in its summation.
- AIC's proposed change to Line 8a should be modified so that the caption in Column A reads "Adjustment to Forecasted Depreciation on Projected Plant Additions for Study-Based Change to Depreciation Rate." The data for this adjustment should be calculated according to the caption and clearly inserted as Columns C, D, and E.

The AG also recommends modification of Workpaper 18 of the AIC's formula rate filing to clearly show the derivation of the Gannett Fleming study-based adjustments to (i) forecasted filing-year depreciation on prior-year plant in service and (ii) forecasted filing-year depreciation on projected plant additions, as shown in new Lines 1a and 8a of Schedule FR C-2, including the values shown in Columns C, D, and E of those Lines. The AG suggests that Workpaper 18 should include whatever underlying data is necessary to clearly show the derivation of those adjustments, and should also indicate, in future filing years when AIC does not update its depreciation accrual rates, that values of 0 should be entered on Columns C, D, and E of Lines 1a and 8a. Alternatively, the AG suggests the calculations described in this paragraph could be shown on Appendix 8 of the formula rate tariff, Ameren Ex. 2.5, instead of on Workpaper 18, and the "Source" for Lines 1a and 8a on Sch. FR C-2 would then refer to Appendix 8.

For similar reasons, the AG believes Workpaper 18 should clearly explicate the derivation of the ADIT adjustment stemming from the depreciation adjustment, currently shown at page 20 of Ameren Ex. 18.4 in Docket No. 13-0301. As shown on Staff Ex. 4.0, page 20, Staff witness Ostrander calculated the ADIT adjustment based on information provided in AIC data request responses found in AG Ex. 6.2, but the calculations are not shown in AIC Workpaper 18.

Provided the changes described above are implemented so that future depreciation changes are transparent, the AG does not oppose the change to allow incorporation of depreciation rates applicable to the rate year in the AIC's FR schedules.

The AG notes that AIC admitted in its Initial Brief that implementation of this adjustment [for the new 2013 accrual rates from the study] will require a number of modifications to Sch. FR C-2 and its source information, however the AG notes that together with its August 19, 2013 tariff filing, AIC has not actually proposed any modification to the "source information" of Sch. FR C-2, namely, Appendix 8 of the formula rate tariff and Workpaper 18.

#### **4. CUB Position**

CUB notes that Staff witness Ostrander demonstrated that AIC's updated depreciation study should be used for 2013 projected depreciation expense. CUB also notes that AIC requests recovery for projected plant additions that will be placed in service in 2013 but it did not calculate the depreciation on that projected plant based on the depreciation rates it has reported will be in effect during that same time.

It appears to CUB that AIC opposed Mr. Ostrander's adjustment in Docket No. 13-0301 because it believed that it would not fit within the Commission authorized formula rate template. CUB believes, however, that AIC agrees with the adjustment in this docket, and reflected Mr. Ostrander's proposed changes in the formula rate structure and protocols filed in Docket No. 13-0517 on August 19, 2013. CUB therefore recommends that the Commission adopt these proposed template changes.

#### **5. Commission Conclusion**

The Commission notes that Staff proposes an adjustment to reflect the incremental amount of depreciation expense and related changes to rate base components due to the utilization of depreciation rates from AIC's updated depreciation rate study that became effective January 1, 2013. Staff states that it recommends reflecting the impact of the utilization of AIC's updated depreciation rates only in the FY Revenue Requirement, as the RY Revenue Requirement is based on 2012 actual information, and would, therefore, not be affected by the new 2013 depreciation rates. CUB also supports Staff's position on this issue.

Likewise, the Commission notes that AIC agrees that Mr. Ostrander's adjustment is appropriate because it appropriately matches the 2013 projected plant additions with

the best available estimate of the 2013 depreciation expense. The Commission notes that AIC believes use of the updated depreciation rates for 2013 has the additional benefit of limiting the reconciliation adjustment that will be required in the formula rate reconciliation proceeding concerning 2013. AIC notes that implementation of this adjustment will require a number of modifications to Schedule FR C-2 and its source information.

The Commission recognizes that the AG supports in part and opposes in part AIC's proposed adjustment to its filing-year depreciation expense found on Schedule FR C-2 of its formula rate tariff. The Commission notes that the AG believes that in the interests of transparency, the tariff revision and its accompanying workpaper should be modified to more clearly show the derivation of the adjustment.

The AG argues that the modifications to the FR schedules AIC proposes to implement this change fail to provide the information necessary for the formula "to operate in a standardized manner and be updated annually with transparent information," as required by Section 16-108.5(c) of the EIMA. The AG suggests that AIC present the derivation and calculation of its depreciation adjustment in a more transparent fashion, as the AG does not believe that the presentation in AIC's August 19, 2013 filing and workpapers provides the information necessary to identify the relevant depreciation adjustment.

AIC, however, complains that the changes the AG proposes to the FR schedules were not offered until the AG's Initial Brief in this matter, therefore no witness testimony has been offered to support or oppose this proposal. The Commission notes that AIC also indicates in its Reply Brief that there appears to be a mathematical error in the language offered by the AG which would not offer the clarity which the AG supports. AIC, however, does indicate that it acknowledges the AG's concerns regarding the transparency of Workpaper 18, and states that it will endeavor to incorporate the AG's recommendations concerning Workpaper 18 into its compliance filing version of that Workpaper.

The Commission believes that based on the evidence presented in the record in this docket, that the proposal offered by Staff, supported by AIC and CUB, and partially supported by the AG, is appropriate and therefore it will be adopted in this proceeding. The Commission finds that it is unable to adopt the language offered by the AG, in light of the concerns expressed by AIC. The Commission does encourage AIC's efforts to bring clarity to the schedules and workpapers provided in these dockets, and will therefore encourage AIC to study the proposal offered by the AG as AIC's attempts to ensure that the documents provided assist in the understanding of each proceeding.

#### **D. Separate CWC Calculation for Filing and Reconciliation Year**

##### **1. Staff Position**

Staff recommends that the Commission adopt Staff's proposed changes to incorporate two separate cash working capital ("CWC") calculations in AIC's current formula rate case, Docket No. 13-0301. Staff states that it proposed two separate CWC calculations because CWC for the FY and the RY are different. Staff indicates that the FY Revenue Requirement includes projected plant additions, as well as the associated derivative adjustments. Staff states that the derivative adjustments associated with the projected plant additions include accumulated depreciation, depreciation expense, ADIT, federal and state income tax, and CWC; and recommend that all derivative adjustments for the projected plant additions should be considered in the FY Revenue Requirement, including the impact on CWC. Since the RY Revenue Requirement is based on the actual results of operation for the RY and does not consider projected plant additions and the associated derivative changes, Staff asserts the CWC would be based on different inputs than the CWC for the FY.

Staff believes therefore, that a CWC based upon the FY is not representative of the CWC requirement in the RY, which was AIC's position in its direct testimony in Docket No. 13-0301. Staff notes that AIC's direct testimony included the CWC calculation based upon the projected plant additions and the associated derivative adjustments for both the FY Revenue Requirement and the RY Revenue Requirement. Subsequently, in rebuttal testimony, Staff states that AIC changed its CWC calculation for both the FY and RY revenue requirements to be based on actual 2012 data only. While Staff agrees with the change for measuring the CWC for the RY, this change in methodology for measuring the CWC for the FY has not been supported. In Staff's opinion, changing the methodology for measurement of the CWC for the FY is no different than changing the measurement of Rate Base from the use of an average to the use of year end values. Staff argues that AIC did not provide a reasonable basis for changing FY CWC from FY inputs to RY inputs. Staff maintains that it is necessary for each revenue requirement to be based on the CWC calculations that are representative of the costs and revenues associated with each revenue requirement.

Staff notes that its proposed changes to AIC's formula rate template do not impact the primary Schedules FR A-1 or FR A-1 REC, which are included in AIC's approved Rate MAP-P tariff; rather the only requisite changes would be to Schedule FR B-1 and App 3 as follows:

Sch B-1 – Add line 40b, "Adjustment to CWC – Filing Year," to include the variance in CWC from the reconciliation year to the filing year from App 3.

App 3 – Add a second page for the filing year CWC calculation. The second page would be composed of lines 31 through 61 to calculate (1) the CWC for the filing year; and (2) the variance between the reconciliation year and filing year CWC.

While not part of AIC's definition of its formula rate template, Staff opines that WP-3, the input source for App 3, would need to be revised to provide the support for the second page of App 3, lines 31 through 60.

Staff notes that AIC witness Stafford disagrees with Staff's proposal due to the additional administrative effort needed to prepare a second CWC calculation, however Staff suggests that AIC did not provide testimony setting forth any analysis or studies which show that implementing Staff's proposed changes would be costly or burdensome. Staff argues that Mr. Stafford's unsubstantiated complaints on the burden of providing a second CWC calculation should not outweigh the benefits which will accrue from this second calculation. Staff notes that during cross examination, Mr. Stafford agreed that the use of Excel spreadsheets with formulae and electronic links to related schedules would enable the CWC schedules to be updated with very limited manual input or intervention.

Staff asserts that a reconciliation balance is the difference between (1) the FY revenue requirement established in a prior proceeding(s), and (2) the reconciliation revenue requirement established in a subsequent proceeding that reflects the actual costs for the FY. Staff argues that in Docket No. 13-0301 the Commission will establish a new revenue requirement to take effect on January 1, 2014 based on the historical FERC Form 1 reports for 2012 and projected plant additions for 2013 and reconcile the revenue requirement for 2012 with actual costs for 2012. Staff states the reconciliation balance will be added to the new revenue requirement and collected in rates effective on January 1, 2014.

In this proceeding, Staff opines that the reconciliation balance at issue is the difference between (1) the filing revenue requirement that set rates for the rate year 2012 (which is a weighted average of the revenue requirements approved in Docket Nos. 09-0306, 09-0307, 09-0308, consolidated and in Docket No. 12-0001 and (2) the RY revenue requirement established in Docket No. 13-0301 that represents the actual costs for the rate year 2012. Staff states that during cross examination in this proceeding, Mr. Stafford agreed that these are the two sets of revenue requirements to be used in determining the reconciliation balance for rate year 2012 in this proceeding, however Staff notes that AIC continues to rely on an incorrect comparison of the two CWC calculations presented in the same formula rate case.

While AIC attempts to minimize the difference presented between the two CWC calculations; Staff asserts that the correct filing year CWC should be used regardless of its effect on rate base. Staff argues that the fiscal impact of Staff's proposal in the current case should not be the criteria on which to make this decision, and notes that AIC cannot guarantee that the difference will always be a small amount. Staff therefore recommends that the Commission adopt Staff's proposed changes to incorporate two separate CWC calculations in Docket No. 13-0301.

Staff notes that the AG agrees with Staff's proposed adjustment in its Initial Brief, however, the AG also proposes changes to AIC's formula rate schedules to implement the depreciation expense adjustment that are different than the changes proposed by AIC. Staff indicates it is indifferent as to which formula rate schedules

changes are approved by the Commission, since both proposals provide adequate disclosure to implement Staff's adjustment.

## **2. AIC Position**

AIC notes that Staff witness Ostrander proposes that the Commission require AIC to perform two separate calculations of its CWC: one for the FY, and a second for the RY, which AIC states would require a change to its formula rate template. Staff argues that two calculations should be required because the CWC in the FY and RY "are different," and because Staff believes is its "not appropriate to use [cash working capital] based on 2012 data plus the impact of 2013 projected plant additions for the calculation of the actual 2012 or [reconciliation year] revenue requirement."

AIC suggests it has excluded the impact of 2013 plant additions from its CWC calculation, and has used the 2012 actual data for both the FY and the RY revenue requirements. In other words, AIC is using one CWC calculation, the one for the RY, which AIC argues is efficient, produces just and reasonable results, and should be approved by the Commission.

AIC complains that Mr. Ostrander's proposal would have an infinitesimal impact on AIC's revenue requirement in Docket No.13-0301 and in future proceedings, but would impose a significant burden on AIC and increase the risk of inaccuracies. AIC opines that in Docket No. 13-0301, for example, if the rate base was calculated using two sets of CWC data, as Staff proposes, the difference between the two calculations would be \$102,000, a mere one-half of one percent of the rate base; while the difference between the revenue requirements under the two CWC calculations is even more inconsequential—the revenue requirements differ by approximately \$10,000, a difference of one-one thousandth of one percent. AIC contends that any theoretical benefit from performing the two calculations does not outweigh the additional burden placed on AIC by requiring it to perform the calculations, which are complex, and which cost is eventually borne by its customers.

Moreover, AIC avers that the use of a single CWC calculation for both the filing and RY reduces the reconciliation balance in the event of both under- and over-collections. As Staff witness Mr. Ostrander testified at the hearing in Docket No. 13-0301, all things being equal, any difference in the CWC calculations between the RY and the FY creates a reconciliation balance, and the greater the difference between the CWC calculations, the greater the reconciliation balance.

AIC complains that Staff's proposal is not representative of the costs and revenues associated with a complete CWC calculation because Staff's FY calculation includes 2013 plant additions in isolation, and suggest that Staff's proposal would calculate CWC in the FY by adding the projected plant additions for 2013 to AIC's actual CWC data from 2012. AIC asserts that adding projected plant additions in isolation from other changes, such as changes to payroll or other operations and maintenance expenses, has the effect of reducing the CWC amount, primarily due to changes in

interest expense. AIC notes that when actual CWC data for 2013 becomes available, it will include many more elements than just projected plant additions, and these other elements can increase CWC. AIC opines that by ignoring other elements of revenue requirement that impact CWC and focusing solely on projected plant additions, Staff artificially distorts the CWC value for the FY, driving the CWC downward by \$321,000.

Because Mr. Ostrander's proposal imposes a burden on AIC that outweighs any potential benefit, AIC submits it should be rejected. In contrast, AIC's proposal is efficient, comports with Commission precedent, and produces a FY CWC value based on actual RY values, and will likely result in a smaller overall reconciliation balance in future reconciliation years than Staff's proposal. AIC submits that this is a just and reasonable outcome, and should be approved by the Commission.

### **3. CUB Position**

CUB recommends that the Commission adopt Staff witness Ostrander's method of calculating a second CWC amount that recognizes the differences between AIC's FY and RY. CUB notes that AIC instead recommends the use of the same CWC for both years. CUB suggests that AIC's method ignores the derivative change that results in CWC from the inclusion of FY projected plant additions in the revenue requirement. Furthermore, a CWC based up on the FY is not representative of the CWC requirement in the RY. CUB opines that the FY revenue requirement is bound to be different than the RY revenue requirement, and, thus, using the same CWC for both years would result in rates that do not represent actual costs and revenues. CUB believes the Commission should consistently apply the derivative changes to AIC's revenue requirement and thus require AIC to use separate CWC amounts that recognize the differences between the filing and reconciliation years.

CUB notes that Docket No. 13-0301, from which this docket is derived, is the first formula rate proceeding in which AIC has a RY Revenue Requirement, so this is essentially an issue of first impression for the Commission. In Docket Nos. 12-0001 and 12-0293, Ameren's initial formula rate docket and its first reconciliation docket, respectively, the CWC calculation included the projected plant additions and the associated derivative adjustments for the FY Revenue Requirement. CUB states that in AIC's direct testimony in Docket No. 13-0301 included the CWC calculation based upon the projected plant additions and the associated derivative adjustments for both the FY Revenue Requirement and the RY Revenue Requirement, while in AIC's rebuttal testimony in Docket No. 13-0301, its CWC calculation was not based upon the projected plant additions and the associated derivative adjustments for either the FY Revenue Requirement or RY Revenue Requirement. Rather, CUB states that AIC's CWC calculation for both the FY and RY revenue requirements was based on actual 2012 data and excluded the impact of 2013 projected plant additions.

CUB notes that AIC objects to Mr. Ostrander's proposal because it requires a change to the formula rate template, which currently only allows one set of inputs, and because it claims the proposal is inconsistent with the Commission's Order in Docket

No. 12-0321, the second formula rate filing of ComEd. CUB suggests that these are not appropriate or legally sustainable arguments for several reasons. CUB notes the instant docket is a Section 9-201 proceeding under the Act, for which changes to the formula rate template are explicitly provided; as well as that AIC itself changed the CWC calculation to use the RY inputs in WP-3 in rebuttal testimony without seeking Commission approval outside of the formula rate proceeding in Docket No. 13-0301, after initially filing its CWC calculation using the FY inputs. Thus, CUB argues that AIC's own actions concede that there is more flexibility in the formula rate template than its interpretation suggests. CUB also states that AIC's CWC calculation was not based upon the projected plant additions and the associated derivative adjustments for either the FY Revenue Requirement or the RY Revenue Requirement. CUB notes that AIC's CWC calculation for both the FY and RY revenue requirements were based on actual 2012 data and excluded the impact of 2013 projected plant additions to be consistent with the Commission's Order in Docket No. 12-0321, the second formula rate filing of ComEd.

CUB suggests that AIC's approach leads to an inaccurate CWC that does not consider plant additions and derivative changes in the RY and should not be accepted simply because that methodology was adopted in a previous formula rate proceeding. CUB opines that failing to use a second CWC for the RY means that ratepayers will pay for rates that do not reflect actual costs, because the FY revenue requirement is bound to differ from the RY revenue requirement. CUB asserts that using the same CWC for both years means that, in at least one of the years, the revenue requirement will not represent actual costs and revenues, regardless of how small or large that variance in revenues may be.

CUB notes that Mr. Ostrander described in detail the changes to AIC's formula rate template that are necessary to effectuate his proposal to incorporate two separate CWC calculations. CUB agrees that while the impact of this change is relatively small in this reconciliation, the impact of this calculation will rise as AIC continues to make larger plant additions, which it must as a participating utility under EIMA. CUB therefore recommends that the Commission should adopt Staff's proposed method of using separate CWC amounts for the reconciliation and filing years in order to develop cost-based delivery service rates.

CUB suggests that AIC's main complaint in its Initial Brief about Staff's recommendation to employ two separate CWC calculations – one for the FY and one for the RY – is that it would require a change to AIC's formula rate template that would impose “additional burden on AIC by requiring it to perform the calculations, which are complex and which cost is eventually borne by its customers.” CUB notes that AIC did not provide, however, any studies, analyses or other evidence of the cost of making this change.

CUB believes that AIC does not dispute the fact that Staff's proposal to perform two separate CWC calculations achieves a more accurate representation of AIC's actual costs for each period, and AIC's argument against adoption of this adjustment is



essentially that the benefits do not outweigh the costs. While CUB opines that it may be true that the effect of this approach would only have "an infinitesimal impact" on AIC's revenue requirement in Docket No. 13-0301, CUB suggests that this may not be the case in future dockets.

#### **4. Commission Conclusion**

The Commission notes that Staff recommends that the Commission adopt a change to incorporate two separate CWC calculations in AIC's current formula rate case, Docket No. 13-0301. Staff states that it proposed two separate CWC calculations because CWC for the FY and the RY are different. Staff indicates that the FY Revenue Requirement includes projected plant additions, as well as the associated derivative adjustments. Staff states that the derivative adjustments associated with the projected plant additions include accumulated depreciation, depreciation expense, ADIT, federal and state income tax, and CWC; and recommends that all derivative adjustments for the projected plant additions should be considered in the FY Revenue Requirement, including the impact on CWC. The Commission notes that Staff believes that a CWC based upon the FY is not representative of the CWC requirement in the RY, which was AIC's position in its direct testimony in Docket No. 13-0301.

AIC suggests it has excluded the impact of 2013 plant additions from its CWC calculation, and has used the 2012 actual data for both the FY and the RY revenue requirements. In other words, AIC is using one CWC calculation, the one for the RY, which AIC argues is efficient, produces just and reasonable results, and should be approved by the Commission. AIC complains that Mr. Ostrander's proposal would have an infinitesimal impact on AIC's revenue requirement in Docket No. 13-0301 and in future proceedings, but would impose a significant burden on AIC and increase the risk of inaccuracies.

CUB recommends that the Commission adopt Staff's proposed method of calculating a second CWC amount that recognizes the differences between AIC's FY and RY. CUB notes that Mr. Ostrander described in detail the changes to AIC's formula rate template that are necessary to effectuate his proposal to incorporate two separate CWC calculations. CUB agrees that while the impact of this change is relatively small in this reconciliation, the impact of this calculation will rise as AIC continues to make larger plant additions, which it must as a participating utility under EIMA. CUB recommends that the Commission adopt Staff's proposed method of using separate CWC amounts for the reconciliation and filing years in order to develop cost-based delivery service rates.

The Commission is of the opinion that Staff's proposal is appropriate, and will direct that it be adopted. The Commission believes that AIC's concerns are overstated, and this proposal of Staff does not appear to impose such an onerous burden on AIC that it should be disregarded. The Commission agrees with Staff and CUB that this proposal is an important change that should be adopted now so as to be in place for future proceedings.

## **E. Income Tax Expense Lead for CWC Calculation**

AIC calculates the CWC associated with income tax expense using statutory tax rates and payment dates, and combines current income taxes with deferred taxes. The AG has proposed to set the revenue lag and expense lead days for income taxes to zero, based on its assertion that AIC is not paying income taxes and therefore has no CWC associated with income taxes. This change would require modification to Appendix 3 of the formula rate template.

### **1. AIC Position**

AIC objects to the AG's proposal to alter the traditional way in which AIC has calculated CWC associated with income tax expense. AIC acknowledges that its method is different from the way in which ComEd calculates CWC associated with income tax expense and argues that there is no justification for requiring it to follow ComEd's methodology. Although the Commission indicated in its Order in Docket No. 12-0293 that this inconsistency may need to be reconsidered (Order at 44-46), AIC points out that the AG has not offered any new evidence warranting such reconsideration at this time. AIC goes on to criticize the AG for ignoring the precedent set in past Commission Orders approving AIC's CWC calculation methodology. In light of the clear, long-standing directive of the Commission on this issue, AIC contends that the AG's proposal should be rejected.

### **2. Staff Position**

Staff finds AIC's treatment of deferred income taxes for CWC consistent with Commission practice. Staff recommends that the Commission not set income tax lead days to zero as proposed by the AG. Staff asserts that the Commission has a long standing practice of not considering current and deferred income taxes separately.

### **3. AG Position**

At Ameren Ex. 18.3, Appendix 3, AIC shows a CWC allowance for income tax payment, which the AG believes improperly increases CWC by approximately \$2.05 million. AG witness Brosch testifies that AIC is not presently paying income taxes and did not pay income tax in 2012; thus it had no CWC requirement associated with income tax payment in that year. Deferred income taxes are not paid out in cash, but are instead deferred for expected payment in future tax years; thus, the AG concludes that there can be no CWC requirement in the current year. The AG proposes modifying Appendix 3, line 8 with the caption "(Less) Deferred Income Taxes" to eliminate the \$63,097,000 income tax entry on line 27. The AG states that this reduces the total revenues subject to the revenue lag day value by the total income tax entry, and eliminates the expense lead time associated with AIC's deferred income tax expense.

The AG acknowledges that past Commission decisions pertaining to AIC support AIC's position, but urges the Commission to also recognize the obvious inconsistency in AIC's preferred approach to income tax payments as compared to pass-through revenue tax payments. For income tax payments, the AG notes that Mr. Heintz would prefer to support recent Commission decisions regarding the lead lag study treatment of AIC's income taxes and the use of statutory tax due dates, while he urges rejection of the AG proposal to more precisely account for the timing of actual income-tax related cash flows. On the other hand, AIC proposes to not be bound to statutory due dates for the payment of pass-through revenue taxes only after collection from customers. The AG recommends consistent treatment of both income taxes and pass-through revenue taxes for ComEd and for AIC when updating electric formula rates. Mr. Brosch points out that ComEd's lead lag study filed in Docket No. 13-0318 properly includes zero "Current State Income Tax" and negative "Current Federal Income Tax" in the calculation of CWC, which has the effect of not increasing CWC when the utility is experiencing income tax loss carry-forwards. According to the AG, AIC offers no rebuttal to the fact that ComEd properly reflects its actual tax payment in its CWC calculation, or for AIC's obvious inconsistent treatment of income taxes and municipal utility tax and Energy Assistance Charges remittances in its lead lag study. Consistent treatment of AIC income tax expense with the more detailed accounting routinely employed by ComEd would require modification of the lead lag study calculation, as proposed by Mr. Brosch. The AG contends that it is essential to not increase CWC for income tax payments when AIC is not presently paying such taxes and does not expect to pay any federal income taxes until after 2014.

The AG also points out that in Docket No. 12-0293, the Commission stated that it would look anew at the AG's proposal on this issue in light of future new evidence. (Order at 46) The AG believes that Mr. Brosch has provided such new evidence in this proceeding. First, he explains that the same federal and state income tax laws apply to ComEd and AIC, so the treatment of income taxes in the lead lag studies of both utilities should be the same. Then, the AG continues, Mr. Brosch quotes from Ameren's SEC Form 10K where Ameren indicated that no federal income taxes will be payable for AIC into 2015 because of net operating loss and tax credit carryforwards. According to Mr. Brosch, because AIC is not paying income taxes, it can not have any CWC investment associated with federal income tax expense. Next, Mr. Brosch notes that AIC's proposed expense lead day values for federal and state income tax expenses are computed using statutory installment tax due dates, rather than any actual payment data, indicating that this approach is entirely hypothetical for a company that is not paying income taxes and does not expect to pay income taxes in the period new rates established in this docket will be effective. Mr. Brosch testifies that deferred income taxes by definition are not paid out in cash, but instead are deferred for expected payment in future tax years, such that there can be no CWC requirement because there is no current-period cash transaction. The AG asserts that AIC begs the question when it attempts to dismiss Mr. Brosch's argument by observing that "ComEd and AIC continue to use different methods to calculate income tax expense for CWC purposes." (AIC Initial Brief at 9) That is precisely the problem in the AG's opinion: as Mr. Brosch

stated, ComEd's treatment of income tax expense for CWC purposes is consistent with proper accounting and ratemaking, but AIC's is not.

#### **4. CUB Position**

AIC presently has no income taxes currently payable in 2012, and therefore has no cash outflows or CWC requirements associated with income taxes. AIC does not expect to pay any federal income taxes until after 2014. CUB therefore argues that 2012 income tax expenses should be completely deferred income tax expenses, which are considered non-cash expenses and are properly removed from the CWC calculations. In other words, CUB states that AIC can not have any CWC investment associated with income tax expenses that it is not paying. CUB contends that past practice and the fact that AIC has chosen not to distinguish between current and deferred tax expense is not justification for the artificially inflated CWC requirement AIC has produced. CUB supports the adjustment proposed by AG witness Brosch to assign zero revenue lag and expense lead days to deferred income tax expenses.

#### **5. Commission Conclusion**

In reviewing the arguments on this issue, the position of AIC and Staff can be best summarized as "we have always done it this way, why change now?" In response, the AG and CUB offer valid reasons for reconsidering this practice. No party disputes that AIC will not actually pay any income taxes until 2015, yet AIC would have its ratepayers contribute to CWC as if it were paying income taxes now. Under similar income tax circumstances, ComEd ratepayers do not contribute to CWC. Why this disparate treatment of ratepayers should be allowed to continue has not been justified by AIC or Staff. "We have always done it this way," without more, is no justification. Logic and fairness to ratepayers compel the Commission to adopt the AG's position on this issue.

### **IV. PROCESS FOR IMPLEMENTATION OF TEMPLATE CHANGES**

Following adoption of an interim order in these consolidated dockets, there exists the question of how to implement the approved formula rate template changes in pending Docket No. 13-0301. AIC, the AG, and Staff each offer comments on this issue. Only the AG and AIC, however, make substantive suggestions.

#### **1. AG Position**

Following the adoption of an interim order in this proceeding, the AG suggests that AIC file within three business days its revised formula rate tariff (including all schedules and appendices) and workpapers consistent with such interim order and then distribute the Excel file to all parties in this docket. Following a further three business day period for parties to file motions objecting to such Excel file, the AG states that the Commission should then approve the Excel spreadsheets, subject to any further modifications to comply with the interim order. Once the changes called for in the

interim order are approved, the AG recommends that the Commission then populate the new schedules with the financial and accounting inputs and adjustments approved by the Commission in Docket No. 13-0301. The AG states that the revenue requirements and rates resulting from Docket No. 13-0301 should be based on the schedules approved in this docket, and become effective “beginning on the first billing day of” January, 2014 pursuant to Section 16-108.5(d)(2).

## **2. AIC Position**

AIC proposes that the interim order in this proceeding direct AIC to submit within five business days from entry of the interim order a compliance filing, consisting of the formula rate tariffs, supporting schedule, and appendices that reflect the formula template changes approved in the interim order. AIC states that the compliance filing would not be populated with formula rate inputs, but would allow parties a chance to review the changes. AIC would also provide parties with a working Excel version of the formula rate tariffs, supporting schedule, and appendices reflecting the changes approved in the interim order. AIC explains that the revised formula rate tariffs, supporting schedule, and appendices submitted in the compliance filing would subsequently be populated with formula rate inputs resulting from the final order in Docket No. 13-0301, to be reflected in rates in January 2014. AIC recommends that the AG's proposal be rejected. AIC asserts that allowing an opportunity for motions introduces unnecessary procedural complexity and would only serve to delay the finalization of any changes.

## **3. Staff Position**

Staff recommends that an interim order be entered prior to November 27, 2013 so that any associated changes can be made to AIC's tariffs, schedules, appendices, and/or workpapers and the resultant revenue requirement impacts be, if any, reflected in rates at the same time new rates take effect following the Commission's order in Docket No. 13-0301. Staff does not offer any specific implementation suggestions.

## **4. Commission Conclusion**

The Commission has considered the implementation suggestions and concludes that simpler is better in this instance. Within five business days from the entry of this Interim Order, AIC shall make a compliance filing, consisting of the formula rate tariffs, supporting schedule, and appendices that reflect the formula template changes approved herein. The compliance filing need not be populated with formula rate inputs. At the same time of its compliance filing, AIC shall provide the parties to this proceeding with a working Excel version of the formula rate tariffs, supporting schedule, and appendices. Because the record in this proceeding will remain open for some time after the entry of the Interim Order, if a problem exists in AIC's compliance filing, a party is free to submit an appropriate motion to address that problem. As AIC suggests, the AG's proposal is unnecessarily drawn out.

## **V. FINDINGS AND ORDERING PARAGRAPHS**

The Commission, having given due consideration to the entire record herein and being fully advised in the premises, is of the opinion and finds that:

- (1) AIC is an Illinois corporation engaged in the distribution and sale of electricity and natural gas to the public in Illinois, and is a public utility as defined in Section 3-105 of the Act;
- (2) the Commission has jurisdiction over the parties hereto and the subject matter herein;
- (3) the recitals of fact and conclusions of law reached in the prefatory portion of this Interim Order are supported by the evidence of record, and are hereby adopted as findings of fact and conclusions of law;
- (4) the proposed revisions to AIC's Rate MAP-P approved herein are consistent with Public Acts 97-0616, 97-0646, and 98-0015;
- (5) AIC should be authorized to place into effect a revised Rate MAP-P, consistent with the findings of this Interim Order;
- (6) the revisions authorized by this Interim Order shall take effect beginning on the first billing day of the January 2014 billing period following the date of the final order in Docket No. 13-0301; the revised tariff sheets, however, shall be filed no later than December 5, 2013, with the tariff sheets to be corrected thereafter if necessary; and
- (7) all motions, petitions, objections, and other matters in this proceeding which remain unresolved should be disposed of consistent with the conclusions herein.

IT IS THEREFORE ORDERED by the Illinois Commerce Commission that the tariff sheets at issue and presently in effect for electric delivery service rendered by Ameren Illinois Company d/b/a Ameren Illinois are hereby permanently canceled and annulled effective at such time as the revised electric delivery service tariff sheets approved herein become effective by virtue of this Interim Order.

IT IS FURTHER ORDERED that Ameren Illinois Company d/b/a Ameren Illinois is authorized to file revised tariff sheets with supporting workpapers in accordance with Findings (5) and (6) of this Interim Order, applicable to electric delivery service furnished on and after the effective date of said tariff sheets.

IT IS FURTHER ORDERED that Ameren Illinois Company d/b/a Ameren Illinois shall update its formula rate in Docket No. 13-0301 in accordance with this Interim Order.

IT IS FURTHER ORDERED that all motions, petitions, objections, and other matters in this proceeding which remain unresolved are disposed of consistent with the conclusions herein.

IT IS FURTHER ORDERED that this Interim Order is not final and is not subject to the Administrative Review Law.

Dated: November 1, 2013

Briefs on Exceptions must be received by November 13, 2013.

John D. Albers  
J. Stephen Yoder  
Administrative Law Judges